King Tonopah Co. v. Lynch (1916), 232 F (2) 485, 489-90..... 22
Lohman v. Kansas R.R.Co. 35 S.W. (2) 112, 72 A. L. R. 172..... 17
Mullane v. Cent. Hanover Bank (1950) 339 U.S. 306, 314-15, 94 L. Ed. 865..... 22
Somerville Nat. Bank v. Hornblower 199 N.E. 918..... 19
Wirtz v. Young Elec. Co. (1963), 315 F (2) 326, 327..... 23

STATUTES AND RULES CITED

Colorado Rev. Stats. Chap. 31, Art. 2, Sec. 1 (APPENDIX "H")..... 4 & 6
Colorado Rev. Stats. Chap. 40, Art. 5, Secs. 2, 13 & 14 (APPENDIX "I")..... 4 & 6
Colorado Rules of Civ. Proc. Rule 104, Replevin..... 4,17,18
Colorado Rules of Civ. Proc. Rules 8, 12 and 56..... 6
Rules of the United States Supreme Court, Rules 19, 21 & 23..... 4 & 13
Title 28 USC 1257 (1)..... 4

MISCELLANEOUS CITATIONS

72 A. L. R. 172..... 17
46 Am. Jur. Replevin, Sec. 22..... 19

APPENDIX

The Appendix includes Petitioner's Briefs to the Colorado Supreme Court, and the Certified Record on Writ of Error No. 20678 to that Court,

and the additional APPENDICES listed as follows:

"A"--Opinion of Denver State Court..... 1 - 2
"B"--Opinion of Colorado Supreme Court..... 3 - 6
"C"--Defendants Motion to Dismiss..... 7 - 8
"D"--Pltf's. Request for Oral Hearing on Appeal to Colorado Supreme Court..... 8
"E"--Supreme Court's Denial of "D"..... 8 - 9
"F"--Defts. Request for Oral Hearing on Appeal to Colorado Supreme Court..... 9
"G"--Pltfs. Correspondence in re "F"..... 9 - 10
"H"--Colorado Corporation Stock Transfer Statute, Chap. 31, Art. II, Sec. 1..... 11
"I"--Colorado Larceny Act, Chap. 40, Art. 5, Secs. 2, 13 & 14..... 11 - 12
"J"--Colorado Constitution, Art. II, Secs. 23 & 25..... 12
"K"--Complaint in Better Industries, Inc. v. Joseph M. Brennan, No. B-45641..... 12
"L"--Plaintiff in Error Motion to amend Remittitur of Colorado Supreme Court..... 13

SUPREME COURT of the UNITED STATES

October Term 1965

No. _____

JOSEPH M. BRENNAN,

Petitioner,

vs.

CHARLES E. GROVER and JOHN E. GORSUCH, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm b/b as GORSUCH, KIRGIS, CAMPBELL, WALKER and GROVER, and JOHN DOE, JOHN ROE, JANE DOE, JANE ROE, and JOHN AND JANE ROE'S unknown at the present time,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Colorado, which affirmed the opinion of District Court in and for the City and County of Denver, Colorado.

OPINIONS BELOW

A copy of the opinion of the District Court in and for the City and County of Denver, Colorado is part of the Writ of Error Record to the Colorado

Supreme Court (R. Fol. 98). A copy of said opinion is attached hereto as APPENDIX "A".

A copy of the opinion of the Supreme Court of the State of Colorado, as entered on August 2, 1965, is attached hereto as APPENDIX "B". A copy of the Petition for Rehearing and the denial of same as entered on August 30, 1965, is attached hereto. See APPENDIX "C" page 10, in re denial.

JURISDICTION

Plaintiff-petitioner Brennan's Replevin action was filed in the District Court in and for the City and County of Denver, Colorado on October 30, 1964, which action was dismissed by said Court on December 14, 1964, without granting any hearing to said Brennan on the motion to dismiss as filed by the defendants-respondents. The opinion of the Supreme Court for the State of Colorado affirmed said Denver District Court's dismissal. The jurisdiction of this Court is invoked under Title 28 USC 1257 (1) and Rule 21 of the Revised Rules of the Supreme Court of the United States.

Petitioner Brennan's motion for oral argument on the Writ of Error to the Colorado Supreme Court (APPENDIX "D" hereto), and said Court's denial thereof (APPENDIX "E" hereto) was rendered on July 15, 1965. Matters pertaining to the motion for oral argument by the defendants-respondents on said Writ of Error could not be ascertained by said Brennan (APPENDIX "F" hereto).

QUESTIONS PRESENTED

1. Did delivery unto plaintiff-petitioner Brennan of the duly indorsed in blank certificate of stock convey to and vest in said Brennan the absolute ownership of the personal property, viz, the particular piece of paper consisting of said indorsed in blank certificate of stock, including what is represented thereby?

2. Did delivery unto plaintiff-petitioner Brennan of the duly executed, verified and irrevocable sale and assignment instrument concerning the specified certificate of stock, convey to and vest in said Brennan the absolute ownership of the personal property, viz, the particular piece of paper consisting of said duly executed sale and assignment instrument?

3. If plaintiff-petitioner Brennan was the owner of the personal property, viz, each of said indorsed in blank certificates of stock, and, each of said duly executed, verified and irrevocable sale and assignment instruments, subsequent to said Brennan's receipt of same from the registered stockholders in 1954, was said Brennan possessed of the rights as follows:

(a) The right to institute a replevin action to recover plaintiff-petitioner Brennan's said stolen personal property, under the provisions of the pertinent Statutes and Rules of Civil Procedure of the State of Colorado, and the Constitutions of the State of Colorado and the United States and the Bill of Rights? And,

(b) The absolute right to be duly notified of and granted a hearing on the motion of defendants-respondents to dismiss said Brennan's replevin action and complaint, for failure to state a claim upon which any relief could be granted? And,

(c) If the said Denver District Court dismissed said Brennan's replevin action in denial of his right to a full and proper hearing on defendants-respondents said motion to dismiss said replevin action, was plaintiff-petitioner Brennan thereby denied the due process of law in recovery of his said stolen personal property, and incidentally caused impending and irreparable injury and loss thereof?

STATUTES, RULES OF CIVIL PROCEDURE, CONSTITUTIONS OF COLORADO AND THE UNITED STATES INVOLVED.

The pertinent portions of the Revised Statutes of the State of Colorado are set forth in petitioners Opening Brief to the Colorado Supreme Court appended hereto on the referenced pages, viz, Chap. 31, Art. II, Sec. 1 at page 8* (and APPENDIX "H" hereof); Chap. 40, Art. 5, Secs. 2, 13 & 14 at page 9 (and APPENDIX "I" hereof); Rule 104 of the Colorado Rules of Civil Procedure at page 10 REPLEVIN PERSONAL PROPERTY;Title 28 USC 1257 (1) and Rules 19, 21 & 23 of the Revised Rules of the Supreme Court of the United States; the Seventh and Fourteenth Amendments, and Secs. 23 & 25 of Art. II of the Constitution of the State of Colorado and the Bill of Rights, at page 14.

* Uniform Stock Transfer Act as adopted by Colorado.

STATEMENT

During July, August and September, 1954, certain duly indorsed in blank certificates of stock in Rock Wool Insulating Company were delivered to plaintiff-petitioner Brennan by the registered stockholders thereof, together with the simultaneous delivery of certain duly executed and irrevocable instruments of sale, assignment and transfer of all rights, title and interest in and to each of said certificates of stock.

Thereupon, plaintiff-petitioner Brennan became absolute owner and possessor ef each of the pieces of paper, viz: (1) Each of said indorsed in blank certificates of stock; and, (2) Each of said duly executed and irrevocable stock sale, assignment and transfer instruments pertinent to each of said certificates of stock.

Facsimile photo copies of each of said documents are appended to the OPENING BRIEF OF PLAINTIFF IN ERROR (as submitted herewith) and as marked therein as: EXHIBITS "A" & "A-1", "B" & "B-1", "C" & "C-1", "D" & "D-1".

The originals of each of said documents remained in plaintiff-petitioner Brennan's possession, as his personal property, at all times since the delivery thereof to him by the registered stockholders in 1954, until all of said documents were stolen from him sometime in 1957 or 1958.

Plaintiff-petitioner Brennan's said stolen personal property consisting of said documents, were in the possession of defendants-respondents, when said Brennan instituted his replevin action

in the District Court in and for the City and County of Denver, Colorado, on or about October 30, 1964, against defendants-respondents for the recovery of said stolen personal property.

Said replevin action was brought pursuant to the provisions of the Colorado Revised Statutes, viz: Chap. 31, Art. II, Sec. 1 (APPENDIX "H"); and, the Colorado Rules of Civil Procedure, particularly, but not limited to Rules 12, 56 and 104; the Seventh and Fourteenth Amendments of the Constitution of the United States and the Bill of Rights; and, Secs. 23 & 25 of the Constitution of the State of Colorado (APPENDIX "J").

After delivery of each of said certificates of stock unto plaintiff-petitioner Brennan, he was lawfully empowered to exercise the Power of Attorney as unconditionally granted by the indorsement signature thereon, viz: (1) To write in his name on each of said certificates of stock; and, (2) to surrender same for cancellation and the issuance of new certificates of stock in the name of plaintiff-petitioner Brennan, in place thereof. However, said Brennan refrained from such action by reason of the circumstances, stated as follows:

On May 12, 1954, at a duly called for and held meeting of the Rock Wool Insulating Company Board of Directors, plaintiff-petitioner Brennan was duly elected a Director and the Secretary-Treasurer of said company, at which time and subsequent thereto, said company's books and property was in the possession of a usurper, viz, Herbert F. Korholz, and resultant thereof said company's Directors and Officers were inhibited by said Korholz, in the rightful performance of their

official corporate duties. Consequently, plaintiff-petitioner Brennan was necessarily constrained to retain each of said certificates of stock in their said indorsed in blank status, subsequent to the delivery thereof to him in 1954, and until same were stolen from him in 1957 or 1958.

In 1959, certain of Rock Wool Insulating Company stockholders were prosecuting a derivative suit in the United States District Court for the District of Colorado, against the said usurper, viz, Herbert F. Korholz, and wherein the defendants-respondents were employed by said Korholz as his legal counsel of record in said suit.

However, in 1959, the defendants-respondents secretly connived and conspired to obtain possession of said stolen indorsed in blank certificates of stock, also possession of said duly executed and irrevocable stock sale and assignment instruments, from the party that stole all of said personal property from plaintiff-petitioner in 1957 or 1958.

In 1959 when defendants-respondents acquired possession of said stolen certificates of stock, they had full knowledge that same had been stolen from said Brennan in 1957 or 1958. However, in an illicit design to obliterate said Brennan's rights therein, the defendants-respondents also acquired illicit possession of said Brennan's other said stolen personal property, viz, said duly executed and irrevocable sale, assignment and transfer instruments, which conveyed to and vested in plaintiff-petitioner Brennan all rights, title and interest in said certificates of stock.

On March 31, 1960, defendants-respondents as attorneys for said Korholz perpetrated a purported merger of Rock Wool Insulating Company into MPM Investment Company, and on December 31, 1960, the merger of said MPM Company into Better Industries, Inc., both of which two latter companies were wholly owned by said Korholz's family, and wherein the said certificates of stock as stolen from plaintiff Brennan were involved.

On April 20, 1961, defendants-respondents as said Korholz's attorneys filed a suit against plaintiff-petitioner Brennan in the District Court in and for the City and County of Denver, Colorado, viz, No. B-45641, Better Industries, Inc, vs. Brennan, et al (APPENDIX "K" herein).

The facts concerning said Better Industries, Inc. lawsuit No. B-45641 in said Court, against plaintiff-petitioner, and the unindorsed certificate of stock No. 55 in said Brennan's name, are:

(1) That the complaint in suit No. B-45641 (APPENDIX "K" herein) reveals an illicit connivance of Better Industries, Inc. and its agents with a party, viz, Anthony E. Reilly, concerning said certificate of stock No. 55, and

(2) That said Reilly had stolen said Certificate of stock No. 55 from plaintiff-petitioner Brennan in 1957 or 1958; that said Reilly had also thereupon stolen from said Brennan all of the aforesaid indorsed in blank certificates of stock, and said executed and irrevocable sale and assignment instruments; and, that said Reilly had delivered all of the aforesaid stolen personal property of said Brennan to defendants-respondents in 1959, and,

(3) That said suit No. B-45641 was to be tried by jury; that same was dismissed without according to defendant Brennan therein any proper hearing; that same was dismissed in violation of the applicable Rules of Civil Procedure; that no judgment concerning said Certificate of stock was entered; that the judgment entered therein went beyond the pleadings of the plaintiff - Better Industries, Inc.; and that any judgment therein was procured by extrinsic fraud; and, that any judgment therein is null, void and of no effect, and

(4) That the opinions of both said District State Court and the Colorado Supreme Court appear to be predicated upon the ruling in said Better Industries, Inc. case No. B-45641 of said Denver District State court, and consequently are unfounded in fact or law, and wherein the absolute ownership of plaintiff-petitioner Brennan's said rights, title and interest in and to said indorsed certificates of stock and said executed and irrevocable sale and assignments thereof, are completely misconstrued or ignored, as evinced by the following events, viz:

In the United States District Court for the District of Colorado, certain suits concerning certain of said indorsed in blank certificates of stock and certain of said executed and irrevocable sale and assignments thereof, as were delivered to plaintiff-petitioner Brennan in 1954, and as stolen from him in 1957 or 1958, as aforesaid, and also, concerning said <u>unindorsed</u> certificate of stock No. 55, registered in the name of said Brennan (plaintiff-petitioner), viz:

Replevin suit No. 7754, filed on October 8, 1962, in said U. S. District Court, Denver, Colorado - Brennan v. Sellers, trial to jury on February 1 & 2, 1965, in re: Recovery of Rock Wool Insulating Company indorsed in blank certificate of stock No. 1, and the pertinent executed and irrevocable sale and assignment instrument, as were stolen from said Brennan subsequent to the delivery thereof unto said Brennan in 1954, by said Sellers, and wherein the jury found that:

"THE ISSUES WERE JOINED IN FAVOR OF PLAINTIFF JOSEPH M. BRENNAN AND AGAINST DEFENDANT BERTHA E. SELLERS, AND ASSES THE DAMAGES IN THE SUM OF $53,135.00." This matter is now on appeal to the United States Court of Appeals for the Tenth Circuit.

Replevin suit No. 7958, filed on April 4, 1963, in said U. S. District Court, Denver, Colorado - Brennan vs. Reilly, trial to jury on February 3 & 4, 1965, in re: Recovery of Rock Wool Insulating Company unindorsed certificate of stock No. 55, registered in the name of Joseph M. Brennan (the plaintiff-petitioner herein) and which said certificate of stock was stolen from said Brennan by said Reilly, and wherein the jury found that:

"THE ISSUES WERE JOINED IN FAVOR OF PLAINTIFF JOSEPH M. BRENNAN AND AGAINST DEFENDANT ANTHONY E. REILLY AND ASSESSED THE DAMAGES IN THE SUM OF $30,000.00."

Prior to August 2, 1965, when the Colorado Supreme Court rendered its opinion (APPENDIX "B") affirming the opinion of said Denver State Dist-

rict Court (APPENDIX "A") in re: Said Replevin suit No. B-76366, Brennan v. Grover, et al, the Colorado Supreme Court had full knowledge of, and the import of matters pertaining to the Rock Wool Insulating Company certificates of stock as owned by said Brennan and involved in the said Replevin suits No'd. 7754 & 7958 in the United States District Court for the District of Colorado.

STATE OF THE PROCEEDINGS AND MANNER IN WHICH THE FEDERAL QUESTION - DENIAL OF DUE PROCESS-, SOUGHT TO BE REVIEWED, WAS RAISED IN THE STATE COURTS.

The first opportunity available to plaintiff-petitioner Brennan in the State Courts to raise the Federal Question - Denial of Due Process, was in his Briefs in Appeal No. 21678 on Writ of Error to the Colorado Supreme Court, viz, in "OPENING BRIEF OF PLAINTIFF IN ERROR" (nine copies thereof submitted herewith) at pages 4 & 14 therein; and, in "REPLY BRIEF OF PLAINTIFF IN ERROR" (nine copies thereof submitted herewith) at pages 3 to 6 therein.

The Colorado Supreme Court reference to plaintiff-petitioner Brennan's said Denial of Due Process, is stated on page one of that Court's opinion, to wit:

"HE CLAIMS, AMONG OTHER THINGS, THAT THE DISMISSAL OF HIS COMPLAINT ON MOTION DENIED HIM DUE PROCESS OF LAW" (APPENDIX "B", page 1).*

*See: Motion to amend Remittiur (APPENDIX "L").

DENIAL OF NOTICE & HEARING ON MOTION TO DISMISS

Plaintiff-petitioner Brennan was precluded in raising the Federal Question - Denial of Due Process in said Denver State District Court in his Replevin suit, viz, No. B-76366, Brennan v. Grover et al, therein, by reason of factors as follows:

On November 20, 1964, said Denver State District Court found plaintiff-petitioner Brennan guilty of contempt of court in said No. B-45641, Better Industries, Inc. v. Brennan suit in said Court, by said Brennan "causing to be filed on October 20, 1964, the Replevin suit No. B-76366, Brennan v. Grover, et al (R. Pols. 1 to 22)."

PLAINTIFF-PETITIONER BRENNAN'S SAID REPLEVIN SUIT NO. B-76366, BRENNAN V. GROVER, ET AL, WAS SUMMARILY AND ABRUPTLY DISMISSED WITHOUT ANY NOTICE OF, OR ANY HEARING THEREON GIVEN TO SAID BRENNAN

On December 14, 1964, said Replevin suit No. B-76366, Brennan v. Grover, et al, was abruptly and summarily dismissed, when said Brennan surrendered to the Denver County Sheriff to begin the serving of the 30 days jail sentence imposed upon him for contempt of court in suit No. B-45641. Then, said Brennan was ordered to appear immediately before said Denver State District Court, whereupon, said Brennan's suit No. B-76366, was summarily dismissed without any hearing, and, said contempt of court and said jail sentence was vacated, subject to reinstatement at any time in the future by said Court.

REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT

Dismissal of plaintiff-petitioner Brennan's said Replevin suit No. B-76366, on defendants-respondents motion to dismiss said suit for failure to state a claim upon which any relief could be granted, violated said Brennan's constitutionally protected rights and vested property interests in and to his said stolen personal property, wherein among other matters and things, plaintiff-petitioner Brennan was injured, as follows, viz:

I. Denied his rights under the Uniform Stock Transfer Act as adopted by the State of Colorado.

II. Denied his rights under the provisions of the Fourteenth Amendment of the United States Constitution, and Art. II, Sec. 25 of the Constitution of the State of Colorado.

III. Denied his rights under the provisions of the Seventh Amendment of the Constitution of the United States, and the Bill of Rights.

IV. Denial of his rights under the Statutory provisions of the State of Colorado concerning recovery of his stolen property.

V. Denial of Notice and Hearing on said motion to dismiss his said Replevin suit.

ARGUMENT

Pursuant to the United States Supreme Court Rules 19(a) and 23(h), petitioner hereby shows that by dismissal of his said Replevin suit No.

B-76366, Brennan v. Grover, et al, by the Courts in the State of Colorado, petitioner Brennan was denied his constitutionally protected rights, and the due process of law.

I. STOCK TRANSFER ACT-EQUAL RIGHTS THEREUNDER

The Uniform Stock Transfer Act as adopted by the State of Colorado (APPENDIX "H") establishes the only method of transferring title to a certificate of stock and what is represented thereby. This has been definitely settled in the case of Brennan v. Wills, Ltd. (1957) CCA 10, 263 F (2) 1, 2, Cert. den. 360 U. S. 902, 79 S. Ct. 1284, 3 L. Ed. (2) 1254. And, as consistently followed by the Colorado Supreme Court. See - Goedell v. Aircraft Finance Co. (1963) - Colo - 382 P (2) 812, 814, citing Brennan v. Wills, Ltd case.

It is patent that title to the specified Rock Wool Insulating Company indorsed in blank certificates of stock, as shown by the facsimile photo copies thereof as appended to "OPENING BRIEF OF PLAINTIFF IN ERROR", was vested in and conveyed to petitioner Brennan upon delivery thereof to him in 1954.

It is also patent that absolute ownership of the specified and pertinent sale and assignments of the certificates of stock, as shown by the facsimile photo copies thereof as appended to "OPENING BRIEF OF PLAINTIFF IN ERROR", was vested in and conveyed to petitioner Brennan upon delivery thereof to him in 1954.

II. DEPRIVATION OF PROPERTY WITHOUT DUE PROCESS OF LAW DIRECTLY VIOLATES THE CONSTITUTIONS OF THE UNITED STATES AND THAT OF THE STATE OF COLORADO.

The Fourteenth Amendment of the United States Constitution, and Art. II, Sec. 25 of the Constitution of the State of Colorado were violated by said State Court's summary dismissal of Petitioner's said Replevin suit No. B-76366, Brennan v. Grover, et al. Thereby, petitioner was unjustifiably deprived of his said personal property without due process of law.

III. DUE PROCESS INCLUDES RIGHT OF JURY TRIAL AS PROVIDED BY THE SEVENTH CONSTITUTIONAL AMENDMENT.

The Seventh Amendment of the Constitution of the United States was violated when plaintiff was deprived of his said personal property, by said Court's summary dismissal of petitioner's said Replevin suit No. B-76366, and denial of the due process of law thereby.

IV. DUE PROCESS OF LAW INCLUDES THE RIGHT TO AN ACTION UNDER THE PERTINENT STATUTORY PROVISIONS.

The due process of law was violated when said Replevin suit No. B-76366 was summarily dismissed in denial of petitioner's rights to recover his stolen personal property under the provisions of the Colorado Larceny Act (APPENDIX "I" herein). Therein, petitioner possessed a Statutory right to institute an action against the felon, or any person possessing his stolen personal property.

Said Larceny Act (APPENDIX "I") clearly says that a certificate of stock, or any muniment of title, or any written paper of value to the owner constitutes personal property, and, Rule 104 of the Colorado Rules of Civil Procedure, in accordance with the underlying statute, provides for a Replevin action to regain possession of any stolen personal property, as aforesaid, from either the felon, or any person in possession thereof.

Petitioner therefore had an absolute right to Replevin said pertinent duly executed stock sale and assignment instruments (EXHIBITS "A-1", "B-1", "C-1" & "D-1", appended to "OPENING BRIEF OF PLAINTIFF IN ERROR), which documents became his absolute and exclusive personal property upon delivery to him 1954, and which were stolen from him in 1957 or 1958, and which were in possession of the defendants-respondents when he filed his Replevin suit No. B-76366, Brennan v. Grover, et al, and allegations pertinent thereto incorporated in his complaint therein.

Petitioner also possessed his aforesaid right to independently recover his stolen personal property, viz, the certificates of stock (EXHIBITS "A", "B", "C" & "D", as appended to "OPENING BRIEF OF PLAINTIFF IN ERROR", and as properly pleaded in his said Replevin suit No. B-76366.

In Discontc - Gesellschaft v. U. S. Steel Corp. (1925) 267 U. S. 22,28, 69 L. Ed. 295, 45 S. Ct. 207, it is clearly established:

(1) That share of stock in a corporation, represented by certificates of stock, constitutes

property in themselves, and not merely evidence of ownership. And,

(2) That it recognizes as owner anyone to whom the person declared by the paper to be the owner has transferred it by the indorsement in blank provided for. And,

(3) That it does not depend upon the holder's having given value, but upon the things done by the indorsement on the back of the certificate, viz, the assignment and power of attorney to transfer the shares.

To the same effect, citing, the Disconto case, supra, In re De Lamos Estate, 315 P (2) 611, 627, (1957), citing, Lohman v. Kansas City R.R. 33 S. W. (2) 112, 72 A.L.R. 172, wherein it is said that certificates of stock must be regarded as having the character of personal property in themselves.

THE INDORSED IN BLANK CERTIFICATES OF STOCK WERE SOLD AND DELIVERED TO PETITIONER IN 1954

Significantly, each of the pieces of paper, viz, said indorsed in blank certificates of stock, which incorporated the power of attorney to transfer title thereto unto petitioner, were delivered to petitioner in 1954, and remained in his possession until stolen from him in 1957 or 1958.

TITLE TO THE UNDELIVERABLE INTANGIBLE CORPORATE STOCK WAS NOT SOUGHT IN ANY SUIT AT ANY TIME

Rule 104 of the Colorado Rules of Civil Procedure provides for the replevin by jury trial of wrongfully withheld personal property, for

damages for the retention thereof; and, for the value thereof and damages if delivery is not or cannot be made.

In consonance with Rule 104 of the Colorado Rules of Civil Procedure and its Revised Statutes, as set forth in APPENDIX "H", "I" & "J", petitioner instituted his Replevin suit No. B-76366, Brennan v. Grover, et al (R. Fols. 1 to 22), in accordance with the necessary and required pleadings, as approved in the case of Blackmer v. Blackmer, 87 Colo. 483, 239 P 366, 367, which was a replevin action to recover certificates of stock wrongfully withheld, and wherein the court said:

"The complaint alleged plaintiff's ownership and the right of possession and unlawful detention by the defendant * * * The allegations state a cause of action * * * and the demurrer to it was properly overruled."

As stated in Brennan v. Wills, supra, pages 4 - 5, Judge Huxman said:

"I fail to see where the title to stock or the transfer of title under the Colorado Certificate Stock Transfer Act * * * is a factor in this case. This is not a case involving the title or ownership of the 50 shares represented by Certificate No. 46. * * *
"This is strictly a replevin action in which plaintiff seeks to recover a specific piece of paper, to wit: Stock Certificate No. 46. * * *
"All that is necessary for him to allege or to establish in order to prevail is that he is entitled to the possession of the stock certificate, that it is unlawfully withheld from him,

that demand has been made for its surrender and that compliance with such demand has been refused, and this the petition does.

"While the authorities hold that title or ownership of shares of stock represented by a certificate may not be raised in a replevin action, they do hold, so far as I can find, without exception, that the right to recover a specific stock certificate is the proper subject for such an action." * * *

"46 Am. Jur., Replevin, Sec. 22 states, Replevin, or equitable replevin, may be maintained for a certificate of stock, where the object is to regain possession of the specific paper, and not to test the right to the property which it represents. In Somerville National Bank v. Hornblower (Mass) 199 N. E. 918, while the court held that stock in a corporation could not be recovered by replevin, it did hold that a specific stock certificate could be so recovered. The Court said, 'Replevin, or equitable replevin may be maintained for a certificate of stock.' In Campbell v. Brooks, 47 So. 545 (Miss), the court recognized 'that a writ of replevin will lie for the recovery either of deeds or certificates of stock, where the object is to regain possession of the specific paper and not to test the right to the property which it represents.' In Bush v. Hillman Land Co., 2 Alt. 2d 133 (Del), the court held that replevin would lie to recover a specific stock certificate."

PETITIONER HAS NEVER INSTITUTED A SUIT TO QUIET TITLE, OR TO TRY TITLE TO ANY CORPORATE STOCK.

It is patent that petitioner's suit - Brennan v. Grover, et al, No. B-76366 is a replevin suit;

and, that the objective thereof was to recover each of the papers, viz, the specified certificates of stock, and to recover each of the specified pertinent stock sale and assignment instruments, copies of each of which papers are appended to "OPENING BRIEF OF PLAINTIFF IN ERROR" marked as EXHIBITS "A", "B", "C" & "D" therein.

JUDGMENT IN CASE NO. B-45641, BETTER INDUSTRIES, INC. V. BRENNAN WAS PROCURED BY EXTRINSIC FRAUD.

The judgment in Case No. B-45641, Better Industries, Inc. v. Brennan, was procured by extrinsic fraud. The case was summarily dismissed without granting to defendant Brennan (petitioner) any opportunity for a proper hearing. The judgment therein culminated in an abortive attempt of Better Industries, Inc. to gain possession of said certificate of stock No. 55, as continuously registered in Brennan's name since April, 1954.*

Although the complaint (Appendix "K") in said case No. B-45641 is exclusively confined to said certificate of stock No. 55, and nothing more was before the Court, it appears that the opinions (APPENDIX "A" & "B" herein) are predicated thereon, and on matters that were neither pleaded, nor tried. Consequently, it was incumbent upon petitioner Brennan to institute his Replevin Suit No. B-76366, Brennan v. Grover, et al, to acquire the possession of his stolen personal property in the possession of said defendants (respondents herein).

*See page 10 herein, in re: Brennan v. Reilly in the U. S. District Court at Denver, concerning verdict on February 3 & 4, 1965, concerning the unindorsed certificate of stock No. 55.

V. DUE PROCESS OF LAW WAS DENIED PETITIONER WHEN HIS REPLEVIN SUIT AND COMPLAINT WERE DISMISSED.

Dismissal of plaintiff-petitioner Brennan's Replevin suit No. B-76366, Brennan v. Grover, et al, upon defendants-respondents motion to dismiss for failure to state a claim upon which any relief could be granted, without proper notice of a hearing thereon, or the granting of any hearing thereon to plaintiff-petitioner Brennan, violated and denied said Brennan the due process of law.

It is well settled that due process of law involves and implies the right to be heard, In Galpin v. Page (1872) 85 U.S. 350, at page 368, the Court said:

"It is a rule as old as law, and never more to be repeated than now, that no one shall be personally bound until he has his day in court, by which is meant, until he has been afforded an opportunity to be heard. Judgment without such opportunity, wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and can never be upheld where justice is justly administered."

A TRIAL COURT VIOLATES DUE PROCESS BY RENDERING AN ADVERSE JUDGMENT AGAINST A PARTY SOLELY FOR PUNISHMENT FOR CONTEMPT

Denver State Court's dismissal of Replevin suit No. B-76366, Brennan v. Grover, et al, (APPENDIX "A"), appears to involve a contempt of that Court, in the suit of Better Industries, Inc. v. Brennan, No. B-45641 (APPENDIX "K"), and wherein said Brennan was also denied a hearing, before the summary disposal thereof.

In Hovey v. Elliott (1897), 167 U.S. 409, 42 L. Ed. 215, 17 S. Ct. 841, it was held:

That one in contempt could not be refused his rights under any Statute invoked by him (such as the Colorado Larceny Act (APPENDIX "I"), as cited in "OPENING BRIEF OF PLAINTIFF IN ERROR", at page 9 therein, nor has the Court power to strike his pleadings or dismiss his action, holding that it is of paramount importance that a party's fundamental constitutional rights must be and should be protected. To the same effect in King Tonopah Co. v. Lynch (1916) 232 F. 485, 489-90, wherein the Court held:

That the State possesses no power or right to nullify or abridge the Constitution, and that this principle is illustrative in those cases where it has been held that contemptuous conduct or disobedience on the part of a party cannot be punished by striking such party's pleadings from the files, or dismissing the action. If punished, it must be in some other mode than by taking away his constitutional rights to be heard before being deprived of his property.

In Covey v. Somers (1955), 351 U.S. 141, 146, 100 L. Ed. 1021, 76 S. Ct. 724, citing Mullane v. Cent. Hanover Bank (1950), 339 U.S. 306, 314-5, 94 L. Ed. 865, 70 S. Ct. 652, the Court said:

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections (numerous citations)."

In Wirtz v. Young Elec. Sign Co. (1963), 315 F (2) 326, 327, the Court said:

"If the trial court based its judgment of no cause of action upon a conclusion of law that present compliance is a complete bar to injunctive relief sought by the Secretary upon claim of earlier violations * * * If so presumed the judgment is faulty, for summary disposition requires the total absence of a disputed issue of fact."

In Counsel of Fed. Organs, v. U.S. District Judge for So. Dist. of Miss. (1964), CCA 5, 339 F (2) 898, 900, citing Reynolds v. Cochran, supra, and, Hovey v. Elliott, supra, the Court held:

That in the absence of a hearing and an opportunity to be heard, complaint should not have been dismissed for failure to state a claim. The right of a litigant to be heard is one of the fundamental rights of due process of law.

CONCLUSION

Ownership of the papers, viz, the certificates of stock and the sale and assignment instruments was vested in petitioner upon delivery to him in 1954. The nature and effect of dismissal of petitioner's replevin suit by said State Courts, has irretrievably divested petitioner of his said personal property without due process of law, and in violation of the Seventh and Fourteenth Constitutional Amendments. For the reasons as set forth above, it is respectfully submitted that this petition for writ of certiorari be granted.

Joseph M. Brennan, Petitioner, Pro se,
P.O. Box 1115, Denver 1, Colorado

A P P E N D I X

THE COMPLAINT IN REPLEVIN

The original complaint in replevin was filed by plaintiff-petitioner Brennan in the District Court in and for the City and County of Denver, State of Colorado on October 30, 1964, viz, Case No. B-76366 - Brennan vs. Grover, et al. It consisted of nine causes of action wherein plaintiff-petitioner Brennan sought recovery of his stolen personal property in the possession of the defendants-respondents (R. Fols. 1 to 22).

PROCEEDINGS IN RE: DISMISSAL OF CASE NO. B-76366

On November 9, 1964, defendants-respondents filed a motion to dismiss said Case No. B-76366 for failure to state a cause of action upon which any relief could be granted (R. Fol. 23). Incident thereto, and on December 14, 1964, the said Denver District Court "DISMISSED WITH PREJUDICE" said Case No. B-76366, and to wit:

APPENDIX "A"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, STATE OF COLORADO.

* * * (Caption - Civil Action No. B-76366) * * *

DISMISSAL OF COMPLAINT WITH PREJUDICE

Entered on December 14, 1964

HERETOFORE, on the 12th day of November, 1964, this Court ordered Joseph M. Brennan, as Defendant in Civil Action No. B-45641 entitled Better Industries, Inc. v. Joseph M. Brennan, Anthony E. Reilly

and Frances E. Morrissey, to appear before this Court at 9:00 o'clock a.m. on November 20, 1964 to show cause why the said Joseph M. Brennan should not be punished for contempt of Court because of his misconduct in failing to obey, comply with and carry out the provisions of the final decree duly entered in said Civil Action No. B-45641 on the 24th day of June, 1963; and

On November 20, 1964, this Court found the said Joseph M. Brennan in contempt of Court in causing to be filed on or about October 21, 1964, the Complaint in the above-captioned cause, Civil Action No. B-76366; and

The Court having examined the Complaint on file in this Civil Action No. B-76366 and being fully advised in the premises,

DOTH ORDER, ADJUDGE AND DECREE that this Civil Action No. B-76366 shall be and hereby is dismissed with prejudice, the said Joseph M. Brennan to pay the cost thereof.

DONE IN OPEN COURT this 14th day of December, 1964.

BY THE COURT:

(Signed) Paul Pinchick

Saul Pinchick, Judge

APPENDIX "B"

IN THE SUPREME COURT STATE OF COLORADO
No. 21678

JOSEPH M. BRENNAN,
Plaintiff in Error,
v.
CHARLES E. GROVER, et al,
Defendants in Error.

Error to the District Court of the City and County of Denver. Hon. Saul Pinchick, Judge

EN BANK **JUDGMENT AFFIRMED**
MR JUSTICE SUTTON DELIVERED THE COURT'S OPINION

Plaintiff in error, Brennan, plaintiff in the trial court, seeks relief in a pro se appearance by writ of error from a dismissal on motion of his complaint in which he sought to replevy certain corporate stock certificates from the defendants in error.

On previous occasions Brennan unsuccessfully litigated title to certain stock certificates in the Rock Wool Insulating Company in both the Colorado State and United States Courts of Colorado. His present contention, however, in essence is that he can maintain an action in replevin for the stock against certain of the attorneys of the parties previously sued as well as against several unknown persons. He claims, among other things, that the dismissal of his complaint on motion denies him due process of law; and, he further alleges that the trial court could not properly consider the results of other indep-

endent actions wherein it was determined Brennan had no title to the stock in question. We note that none of the parties previously held to be owners of the stock is named as a party defendant in this action.

One difficulty with Brennan's briefs and argument here is that none of his cited authorities applies to the facts of this case for reasons that hereinafter appear.

In Brennan v. City and County of Denver, et al., _____Colo._____, 397 P. 2d 876 (1964) in regard to Brennan's claim of ownership of the certificates in question we stated in part:

> "*** the record shows that the issue of Brennan's ownership has not only been finally determined in the state courts but that Brennan has also previously litigated in federal courts with various parties about this matter twelve different times, and, has been enjoined by the United States District Court of Colorado from filing any further such actions without first securing approval of the presiding judge of that court. *** We find then that the question of plaintiff's interest in the stock is res judicates in a rather overwhelming fashion."

Preceding the instant action in the District Court of the City and County of Denver, in a separate case (Civil Action No. B-45641) decided June 24, 1963, it appears that it was determined that Brennan had no interest in the Rock Wool Insulating Company "and that the Defendants (one of whom was Brennan) be and they hereby are enjoined from making any such claim."

Nevertheless, Brennan proceeded by this District Court action in replevin (Civil Action No. B-76366), to sue the attorneys of the parties in Case No. B-45641 and was later found in contempt of court in so doing. His thirty day jail sentence was indefinitely postponed on condition that he desist in his actions and dismiss No. B-76366 -- this replevin action. This he has refused to do.

Obviously, the current suit is an unwarranted collateral attack upon the judgment in Civil Action No. B-45641 as previously decided in the trial court and upon earlier judgments which have finally and conclusively determined title to the stock.

A losing party cannot re-litigate the issue of title to property previously decided against him by using the devious route of suing his previous opponent's attorneys to obtain the property. A judgment is not subject to collateral attack where the court had jurisdiction of the subject matter and the parties. 30A Am. Jur., Judgments § 844; 49 C.J.S., Judgments § 401; Cherry Hill v. The Benevolent League of Colorado Travelers Ass'n., 133 Colo. 349, 295 P. 2d 231 (1956).

A collateral attack on a judgment has been defined as "an attempt to avoid, defeat or evade it, or deny its force and effect, in some incidental proceeding not provided by law * * *." 49 C.J.S., Judgments § 408b.

As to Brennan, his claim to title to the stock certificates in question has long been res judicata and his replevin action against the winners attorneys is both vexatious and harassing.

It is clearly at odds with the doctrine of res judicata which is meant to put an end to strife and litigation once the parties have had a judicial determination of their controversy. Although res judicata is usually effective only between parties to former actions governing the same subject matter, we hold that it also encompasses the attorneys of the parties to such prior litigation, who were not parties thereto and had no personal interest in the litigation, such as under the circumstances of this case where it has previously been determined that Brennan had no title to the stock he seeks to replevy. See: Hudson v. Western Oil Fields, 150 Colo. 456, 374 P. 2d 403 (1962); and compare: 30A Am. Jur., Judgments § 431 and cases cited therein and annotated cases cited in 137 A.L.R. 586 et seq. The trial court thus was eminently correct in applying this doctrine to the instant suit and in holding Brennan in contempt of court for filing and pursuing this action.

In the future Brennan should be enjoined by the trial court from bringing any further or additional actions of any kind in regard to his now voided claim of ownership of the stock certificates without first securing the written consent thereto of the presiding judge of the Denver District Court and making his appearance by a duly licensed Colorado attorney.

Affirmed.

APPENDIX "C"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

*** * *(Caption-Civil Action No. B-76333)* * ***
(Filed November 9, 1964)

MOTION TO DISMISS

COME NOW the Defendants in the above-captioned cause, Charles E. Grover and John E. Gorsuch, individually and as partners in Gorsuch, Kirgis, Campbell, Walker and Grover, and respectfully move that this Honorable Court enter its order herein dismissing the Plaintiff's Complaint.

AND AS GROUNDS FOR SAID MOTION shows the Court that the causes of action alleged in said Complaint, first through ninth, fail to state a claim for which the relief asked for, or any relief, may be granted.

GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER

By: (signed) Charles E. Grover
Charles E. Grover, Pro se and for the firm

By: (signed) John E. Gorsuch
John E. Gorsuch, Pro se and for the firm
1900 Security Life Building
Denver, Colorado 80202 222-8631

Address of Defendants
1900 Security Life Building
Denver, Colorado 80202

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of November, 1964, I served a copy of the within Motion to Dismiss upon the Plaintiff, Joseph M. Brennan, by mailing a copy thereof, postage prepaid, to Joseph M. Brennan, P.O. Box 1115, Denver, Colorado 80201

(signed) C. E. Eckerman

APPENDIX "D", "E", "F" & "G"

IN RE MATTERS CONCERNING THE WRIT OF ERROR TO THE COLORADO SUPREME COURT, SEE, APPENDIX "D" - PLAINTIFF IN ERROR BRENNAN'S REQUEST FOR ORAL HEARING; APPENDIX "E" - THE COURT'S DENIAL THEREOF; APPENDIX "F" DEFENDANTS IN ERROR REQUEST FOR ORAL HEARING; AND, APPENDIX "G" IN RE: DENIAL OF INFORMATION TO PLAINTIFF IN ERROR BRENNAN CONCERNING THE REQUEST FOR ORAL ARGUMENT OF DEFENDANTS IN ERROR.

APPENDIX "D"

COLORADO SUPREME COURT

Brennan v. Grover, No. 21678, July 12, 1965

REQUEST FOR ORAL HEARING OF PLAINTIFF IN ERROR

COMES NOW, Joseph M. Brennan, Plaintiff in Error, and requests that the Court grant him an oral argument in the above entitled cause.

(signed) Joseph M. Brennan

APPENDIX "E"

COLORADO SUPREME COURT

Brennan v. Grover, No. 21678, July 15, 1965

DENIAL OF PLAINTIFF IN ERROR REQUEST FOR ORAL ARGUMENT ON WRIT OF ERROR TO COLORADO SUPREME COURT

Dear Mr. Brennan:

The court today denied your motion for oral aurgument in the above numbered and titled case.

(signed) Florence Walsh

Deputy Clerk

APPENDIX "F"

COLORADO SUPREME COURT

Brennan v. Grover, No. 21678, June 20, 1965

REQUEST FOR ORAL HEARING OF DEFENDANTS IN ERROR

COMES NOW, the Defendants in Error, by their attorneys, GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER, and request that the Court grant them an oral argument in the above captioned cause.

(signed) Charles E. Grover

C. E. Eckerman

APPENDIX "G"

CORRESPONDENCE OF PLAINTIFF IN ERROR WITH THE COLORADO SUPREME COURT WHEREIN HE WAS DENIED ALL INFORMATION IN RE THE REQUEST FOR ORAL ARGUMENT ON WRIT OF ERROR AS MADE BY DEFENDANTS IN ERROR

August 17, 1965

Clerk of the Colorado Supreme Court

Re: Brennan vs. Grover, et al, No. 21678 - Appeal. Request for information concerning defendants "REQUEST FOR ORAL ARGUMENT" as made in plaintiff's letter of August 7, 1965.

Dear Sir:

With reference to plaintiff in error letter of

August 7, 1965, wherein clearly understandable and defined requests were made concerning Defendants in Error "REQUEST FOR ORAL ARGUMENT" on the Appeal in the above-captioned cause, plaintiff in error has not received any answer thereto from your office, in fact, your acknowledgement to said letter either evades answering said requests for information as made by plaintiff in error, or otherwise, misapprehends what information relative to said Defendants in Error, "REQUEST FOR ORAL ARGUMENT", as instanced by your reply thereto in your letter of August 9, 1965, and to wit:

CLERK'S OFFICE SUPREME COURT STATE OF COLORADO

Brennan vs. Grover, No. 21678, August 9, 1965
Mr. Joseph M. Brennan
Dear Sir:

The court denied your motion for oral argument in the above numbered and titled case on July 15, 1965 at which time you were notified by letter.

Yours very truly,
RICHARD D. TURELLY, Clerk
(signed) Florence Walsh
Deputy Clerk

Accordingly, request is hereby renewed for the information as requested in said letter of August 7, 1965, from plaintiff in error to your office for the information as specifically requested therein concerning defendants "REQUEST FOR ORAL ARGUMENT" in the above captioned case on Appeal.

Yours very truly
(signed) Joseph M. Brennan

NOTE: The request referred to in said letter of August 7, 1965, was: whether Defendants in Error request for said oral argument was or was not granted, or acted upon by the Court in any manner or form, and the date of any action thereon.

APPENDIX "H"

THE COLORADO REVISED STATUTES CHAP. 31, ART. 11, SEC. 1, IN ACCORDANCE WITH THE UNIFORM STOCK TRANSFER ACT, WHICH IS IN EFFECT IN COLORADO, PROVIDES FOR THE TRANSFER OF A CERTIFICATE OF STOCK AND WHAT IS REPRESENTED THEREBY, AS FOLLOWS:

"(1) By delivery of the certificate indorsed in blank or to a specified person appearing in the certificate to be the owner of such stock, or

(2) By delivery of the certificate and a separate written assignment of the certificate or a power of attorney to sell, assign, or transfer the same or the shares represented thereby, signed by the person appearing by the certificate to be the owner of the shares represented thereby."

APPENDIX "I"

THE COLORADO LARCENY ACT DEFINES A CERTIFICATE OF STOCK, AND ANY PERTINENT DULY EXECUTED SALE, ASSIGNMENT AND TRANSFER INSTRUMENT, AS PERSONAL PROPERTY, RECOVERABLE FROM EITHER THE FELON OR ANYONE IN POSSESSION THEREOF, VIZ:

"LARCENY, PENALTY - 40-5-2: Shall embrace every theft that deprives another of his personal property, or those means or numiments by which the title to property, real or personal, may be ascertained, or the taking or carrying away of any instrument in writing of value to the owner."

"LARCENY, PERSONAL PROPERTY, ACTION TO RECOVER - 40-5-13: All property obtained by larceny, robbery, burglary shall be restored to the owner, and no sale whether in good faith on the part of the purchaser or not, shall divest the owner of his right to maintain his action not only against

the felon, but against any person in whose possession he may find same."

"LARCENY BY BAILEE - 40-5-14: If any bailee, by finding, or otherwise of money, bank bill, or note, or goods, or chattels, shall convert the same to his own use with intent to steal the same, shall be deemed guilty of larceny in the manner as if the original taking had been feloneous."

APPENDIX "J"

COLORADO CONSTITUTION, ART II, SECS. 23 AND 25

Sec. 23: Right to jury trial in Civil Actions.

Sec. 25: Due Process of Law - No person shall be deprived of life, liberty or property, without due process of law.

APPENDIX "K"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

* * *(Caption-Civil Action No. B-45641) * * * (Better Industries, Inc. v. Joseph M. Brennan, et al, Filed April 20, 1961).

COMPLAINT

COMES NOW the Plaintiff, by its attorneys, Gorsuch, Kirgis, Campbell, Walker and Grover and for a cause of action against the Defendants states and alleges as follows:

1. That the Plaintiff is a Massachusetts corporation qualified to do business in Colorado, and that it succeeded to the assets and liabilities of MPM Investment Company, a Delaware Corporation

which was qualified to do business in Colorado and which was merged into the Plaintiff December 31, 1961.

2. That on March 31, 1960 MPM Investment Company was the beneficial owner and holder of record of 2,495 of the 2,500 $100.00 par value authorized and outstanding common stock of Rock Wool Insulating Company, a Colorado corporation.

3. That on March 31, 1960, Rock Wool Insulating Company was merged into MPM Investment Company under the provisions of Delaware Code Annotated, Title 8, Corporations, Chapter 1, Section 253 (as amended) and Colorado Session Laws, 1958, Chapter , Section 71 (as amended). The Certificate of Ownership and Merger and Certificate of the Secretary of State of Delaware to carry out said merger is attached hereto as Exhibit "A" and the Article of Merger of Rock Wool Insulating Company into MPM Investment Company and the Certificate of the Secretary of Colorado to carry out said merger is attached hereto as Exhibit "B" both of which by this reference are incorporated herein.

4. That Delaware Code Annotated, Title 8, Corporations, Chapter 1, Section 253 (as amended) and Colorado Session Laws, 1958, Chapter 32, Section 71 (as amended) allow a parent corporation which owns 95 per cent of the outstanding capital stock of a subsidiary (90 per cent under the Delaware statute) to merge the subsidiary corporation into the parent corporation and to provide for the payment for any outstanding shares other than those owned by the parent corporation. Minority shareholders are required to accept the payment provided in the plan of merger unless they preserve

their right to the appraised value of their share under the statutes.

5. That Defendant Joseph M. Brennan was the holder of record March 31, 1960 of 5 shares of the $100.00 par value common stock of Rock Wool Insulating Company represented by Stock Certificate No. 55, that he was given the notice of said merger required by the statutes and failed to preserve his right to appraisal under said statutes.

6. That for the 5 shares of Rock Wool Insulating Company represented by stock Certificate No. 55 there is due and owing the sum of $350.00 per share, a total of $1,750 which the Plaintiff has paid into the registry of this court.

7. That the Defendant Anthony E. Reilly has in his possession or under his control Stock Certificate No. 55 representing said 5 shares of Rock Wool Insulating Company and may claim some interest in said 5 shares or the money deposited in court therefor.

8. That Defendant Frances E. Morrissey claims an interest in said 5 shares of Rock Wool Insultaing Company, or the money deposited in court therefor, by virtue of an Agreement between herself and Defendant Joseph M. Brennan made on or about March 27, 1954, a copy of which is attached hereto as Exhibit "C" and by this reference made a part hereof.

9. That by virtue of the foregoing conflicting claims to said 5 shares, or the proceeds deposited in court therefor, the Plaintiff is uncertain who is entitled to the sums deposited in court and is

unable to obtain Stock Certificate No. 55 for cancellation.

WHEREFORE, the Plaintiff prays that the court determine which of these three Defendants is entitled to the funds deposited in court in payments for Stock Certificate No. 55 representing 5 shares of Rock Wool Insulating Company and that the court enter a judgment that none of the Defendants have any interest in the 5 shares of Rock Wool Insulating Company represented by Stock Certificate No. 55 or in the Plaintiff, and enter an order directing the Defendant, Anthony E. Reilly, to deliver to the Plaintiff Stock Certificate No. 55. The Plaintiff also prays for costs in this action and for such other, further or different relief as the Court deems proper.

GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER

(signed) Charles E. Grover

APPENDIX "L"

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER, STATE OF COLORADO

* * *(Caption-Civil Action No. B-76366)* * *

(Filed October 5, 1965)

MOTION FOR AMENDMENT OF REMITTITUR OF THE COLORADO SUPREME COURT OF AUGUST 30, 1965

COMES NOW, Joseph M. Brennan, plaintiff in the above-entitled cause, and hereby moves and requests the Court to effect an appropriate and necessary amendment to the Remittitur in said cause, as issued by the Colorado Supreme Court on August 30,

1965, and as grounds and reasons therefor shows unto the Court as follows:

I. Upon the Appeal herein by Writ of Error to the Supreme Court there was presented a question for decision of the Supreme Court, as follows:

> THAT PLAINTIFF WAS DENIED ANY HEARING ON DEFENDANTS MOTION TO DISMISS THE COMPLAINT FOR FAILURE TO STATE A CLAIM UPON WHICH ANY RELIEF COULD BE GRANTED (Plaintiff's Brief, page 4, par 1). And, at page 14, last par. thereof: THE DISMISSAL OF PLAINTIFF'S COMPLAINT IN REPLEVIN, IN THE CIRCUMSTANCES CONCERNING THE WRONGFUL DETENTION OF PLAINTIFF'S STOLEN PERSONAL PROPERTY BY DEFENDANTS, IS REPUGNANT TO THE UNITED STATES SEVENTH AND FOURTEENTH CONSTITUTIONAL AMENDMENTS, AND IN VIOLATION OF SECTIONS 23 AND 25 OF ARTICLE II OF THE COLORADO CONSTITUTION, AND THE BILL OF RIGHTS, AND WHICH NOW STANDS AS UNJUSTIFIED AND IRREPARABLE INJURY AND DAMAGE TO PLAINTIFF, ALL OF WHICH REQUIRES GRAVE JUDICIAL COGNIZANCE AND APPROPRIATE CORRECTION.

II. A copy of Plaintiff's Brief as submitted on Writ of Error to the Colorado Supreme Court is appended hereto, and by reference hereby made a part hereof as though set forth in full herein.

III. WHEREFORE, it is hereby requested that said Remittitur be amended, and that when same is amended and returned it will be amended by adding thereto the following, viz:

UPON THE APPEAL HEREIN THERE WAS PRESENTED AND NECESSARILY PASSED UPON: - SPECIFIED QUESTIONS UNDER

THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTION OF THE STATE OF COLORADO, AND PARTICULARLY THE QUESTION: WAS PLAINTIFF DENIED THE DUE PROCESS OF LAW IN DENYING HIM ANY HEARING ON DEFENDANTS MOTION TO DISMISS PLAINTIFFS COMPLAINT? The requested amendment to said Remittitur shall affirmatively state whether plaintiff was or was not denied the due process.

(signed) JOSEPH M. BRENNAN
Plaintiff, Pro se

IN THE SUPREME COURT OF THE STATE OF COLORADO
No. 21678
(NOTICE & MOTION IN RE: FILING OF PETITION FOR WRIT OF CERTIORARI TO UNITED STATES SUPREME COURT)
(Filed October 7, 1965)

COMES NOW, Joseph M. Brennan, plaintiff in error in the above-entitled case, and hereby gives notice of his intention of Petitioning the Supreme Court of the United States for a Writ of Certiorari, concerning the judgment of decree in the above-entitled cause.

Accordingly, it is hereby requested that the within Certified Record as transmitted to this Court from the District Court in and for the City and County of Denver, Colorado, be released by this Court and delivered to plaintiff in error to permit his preparation of his said Petition for Writ of Error to the Supreme Court of the United States. And, that said Record shall be duly certified by this court.

It is further requested that ten copies of the various Briefs, as have been delivered to and filed in this Court, be released and delivered to plaintiff in error.
(Signed) Joseph M. Brennan, Plaintiff in Error.

INDEX

SUBJECT INDEX

	Pages
JURISDICTION	1, 2, 3
SUPPLEMENTAL STATEMENT OF THE CASE	3, 4, 5, 6, 7, 8, 9
CONCLUSION	9

CASES CITED

	Page
Brennan v. City and County of Denver, 397 P.2d 876 (1964)	9
Brennan v. Korholz, 293 F.2d 751 (1961)	7
Brennan v. W. A. Wills, Ltd., 263 F.2d 1 (1959) cert. denied 360 U.S. 902 (1959)	6
United States Gypsum Co. v. Rock Wool Insulating, Co., 337 F.2d 849 (1964)	8, 9

STATUTES AND RULES CITED

Revised Rules of the United States Supreme Court Rules 19, 21, 23(3) & 23(4)	1, 2, 3, 9
Title 28 USC 1257 (1)	1, 2

APPENDIX

"A"—Order of Denver District Court in Better Industries, Inc. v. Joseph M. Brennan et al 10, 11, 12

"B"—Order of Denver District Court in Better Industries, Inc. v. Joseph M. Brennan et al 13, 14, 15, 16

IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 851

JOSEPH M. BRENNAN,

Petitioner,

VS.

CHARLES E. GROVER and JOHN E. GORSUCH, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm d/b as GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER, and JOHN DOE, JOHN ROE, JANE DOE, JANE ROE, and JOHN AND JANE ROES unknown at the present time,

Respondents.

BRIEF OF RESPONDENTS CHARLES E. GROVER AND JOHN E. GORSUCH, INDIVIDUALLY OR AS PARTNERS IN THE DENVER, COLORADO LAW FIRM d/b/a GORSUCH, KIRGIS, CAMPBELL, WALKER AND GROVER, IN OPPOSITION TO PETITION FOR CERTIORARI.

The above-named Respondents pray that Joseph M. Brennan's Petition for Writ of Certiorari be denied for the following reasons.

Jurisdiction

Mr. Brennan's Petition for Certiorari states that the jurisdiction of the Supreme Court of the United States is invoked under Title 28 U.S.C. 1257(1) and Rule 21 of the Revised Rules of the Supreme Court of the United States. 28 U.S.C. 1257(1) provides that final judgments rendered by the highest court of a state may be reviewed

by the Supreme Court: "(1) By appeal, where is drawn in question the validity of a treaty or statute of the United States and the decision is against its validity." It is clear that no treaty or statute of the United States was questioned by the Supreme Court of Colorado in No. 21678. Probably Mr. Brennan has some other subsection of 28 U.S.C. 1257 in mind.

Mr. Brennan also cites Rule 21 of the Supreme Court Rules which relates to how review by certiorari is sought. It is not a jurisdictional rule. Supreme Court Rule 19 relates to considerations governing review on certiorari, the one relating to decisions of state courts being as follows:

> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

It is clear from Mr. Brennan's petition that the Colorado Supreme Court did not decide a federal question in its decision in the case of Joseph M. Brennan, Plaintiff in Error, v. Charles E. Grover, et al., Defendants in Error, No. 21678.

It is also pointed out that Mr. Brennan's Petition for Writ of Certiorari violates Supreme Court Rule 23(4) which provides that:

> "The failure of a petitioner to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying his petition."

It is also pointed out to the court that, although Mr. Brennan did not serve the Respondents with copies thereof, he apparently attached to his Petition for Writ of Certiorari nine copies of his opening brief in the Colorado Supreme Court and nine copies of his reply brief in the Colorado Supreme Court, which on page 11 of his Petition for Certiorari are referred to as being submitted with his Petition. These briefs constitute separate briefs in sup-

port of a Petition for Writ of Certiorari in violation of Supreme Court Rule 23(3) which provides that the clerk shall refuse to file any Petition for Writ of Certiorari to which is annexed or appended any supporting brief.

Supplemental Statement of the Case

Civil Action No. B-76366 in the District Court in and for the City and County of Denver, State of Colorado, the action which Mr. Brennan appealed to the Supreme Court of the State of Colorado by Writ of Error, it being numbered 21678 in that court, and also being the action which he seeks to review by his Petition for Writ of Certiorari in the Supreme Court of the United States, was filed by Joseph M. Brennan against Charles E. Grover, John Gorsuch, Gorsuch, Kirgis, Campbell, Walker and Grover, and John Doe, John Roe, Jane Doe, Jane Roe, and John and Jane Roes unknown, on or about October 21, 1964, claiming an interest in Rock Wool Insulating Company and seeking to replevin certain stock certificates of Rock Wool Insulating Company. It was a continuation of a long line of litigation conducted pro se by Mr. Brennan against various parties, this being the litigation referred to by the Colorado Supreme Court in the recent case of Brennan v. City and County of Denver, et al., No. 21253, decided December 28, 1964, wherein the Supreme Court stated:

> "Certified copies of judgments entered in several previous cases against Plaintiff, concerning, in part, his alleged interest in the stock in question were made a part of the Clerk's Amended Motion for Summary Judgment. In fact, the record shows that the issue of Brennan's ownership has not only been finally determined in the state courts but that Brennan has also previously litigated in federal courts with various parties about this matter twelve different times, and, has been enjoined by the United States District Court of Colorado from filing any further such actions without first securing approval of the presiding judge of that court."

Joseph M. Brennan has been claiming an interest in Rock Wool Insulating Company and attempting to obtain the stock certificates thereto for many years. Upon the determination of various courts that he has no interest in Rock Wool Insulating Company, Mr. Brennan merely brings another action. In order to prevent this, Better Industries, Inc., by its attorneys, Gorsuch, Kirgis, Campbell, Walker and Grover, filed Civil Action No. B-45641, Better Industries, Inc. v. Joseph M. Brennan, Anthony E. Reilly and Frances E. Morrissey, in the District Court for the City and County of Denver, wherein on June 24, 1963, the court entered a judgment and decree appearing at supplemental record folios 11A-13A, which provided:

> "That the merger of Rock Wool Insulating Company into MPM Investment Company March 31, 1960 was in all respects valid and binding upon the Defendants in this action, that the Plaintiff has fully discharged all its obligations to said Defendants by the deposit of $1,750.00 into the Registry of this Court, that the Defendants have no further interest in Rock Wool Insulating Company, MPM Investment Company and Better Industries, Inc. arising through any interest in Rock Wool Insulating Company, and that the Defendants be and they hereby are enjoined from making any such claim."

After such judgment, Joseph M. Brennan brought an action against the Clerk to get stock certificate no. 55 and also the action involved in this appeal, Civil Action No. B-76366, against the attorneys in Civil Action No. B-45641. The action was an action of replevin for documents alleged to be in the possession of the Defendants, including stock certificate no. 55, or in the alternative, for damages in the amount of $3,060,000.

After the filing of the complaint in Civil Action No. B-76366, the Defendants, other than those not served, filed motions to dismiss, to post bond for costs and to strike. Also, in Civil Action No. B-45641 they filed a motion for contempt citation asking the court to order

Joseph M. Brennan to appear before it to show cause why he should not be punished for contempt for neglect and refusal to comply with the judgment of the court enjoining him from claiming any interest in Rock Wool Insulating Company. Such an order was issued and a hearing held November 20, 1964 at which hearing Joseph M. Brennan appeared and was given an opportunity to purge himself of the contempt. At the conclusion of the hearing an order was entered, a copy of which appears as Appendix A attached hereto and by this reference made a part hereof, finding the Joseph M. Brennan was in contempt of court in causing to be filed Civil Action No. B-76366, the subject of this writ of error. In said order the court gave Joseph M. Brennan until 9:00 a.m. December 11, 1964, in which to dismiss Civil Action No. B-76366 or suffer such fine or imprisonment as the court should then determine.

On December 11, 1964 Joseph M. Brennan refused to dismiss Civil Action No. B-76366 and the court ordered him to serve a 30-day sentence in the Denver County Jail commencing December 14, 1964. On December 14, 1964, the court suspended the jail sentence indefinitely upon the condition that Joseph M. Brennan does not institute any further civil actions of any kind or nature wherein he asserts any right, title or interest in or to the legal or beneficial ownership of any shares of Rock Wool Insulating Company, and dismissed Civil Action No. B-76366. That order is attached hereto as Appendix B and by this reference made a part hereof. The court also issued the order of December 14, 1964, in the action involved in this writ of error, entitled dismissal with prejudice, record folios 99-101.

The statements in the brief of the Plaintiff in Error that he was not afforded a hearing on the dismissal of Civil Action No. B-76366 are incorrect. Not only was Joseph M. Brennan granted the hearings previously stated, but he was in Civil Action No. B-76366 granted a hearing before Judge Pinchick on January 6, 1965, which resulted

in the order denying the Plaintiff's motion for rehearing or new trial which appears in the record at folio 104.

The dismissal of this action and its affirmance by the Colorado Supreme Court were correct inasmuch as Joseph M. Brennan's complaint shows on its face that it was an attempt to collaterally attack the judgment in Civil Action No. B-45641, Better Industries, Inc. v. Joseph M. Brennan, Anthony E. Reilly and Frances E. Morrissey, entered by the Denver District Court June 24, 1963, supplemental record folios 11A-13A, and the decree in Civil Action No. 6192 in the United States District Court for the District of Colorado, United States Gypsum Company v. Rock Wool Insulating Company et al., and Joseph M. Brennan, intervenor, filed October 14, 1963, supplemental record folios 39A-53A, both of which judgments found that Joseph M. Brennan has no interest and never had any interest in Rock Wool Insulating Company.

Mr. Brennan attempts to raise a federal question by asserting that his constitutional rights have been violated because he did not get a hearing. The record shows clearly that he had a number of hearings in this action and has been litigating this particular case for many years over and over again. A list of the cases litigated by Mr. Brennan involving the certificates of stock mentioned in his complaint are as follows:

(a) Civil Action No. 4820, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. W. A. Wills, Ltd., W. A. Wills, Herman Speken, William Greenberg, Herbert Korholz, Speken Wrecking Co., Rock Wool Insulating Company and M.P.M. Investment Company; judgment dismissing complaint affirmed by Tenth Circuit Court of Appeals, 263 F.2d 1 (1959); certiorari denied by United States Supreme Court, 360 U.S. 902 (1959).

(b) Civil Action No. 6393, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Herbert F. Korholz, Rock Wool Insulating Co., M.P.M. Investment Co., and Reconstruction Finance Corporation.

Civil Action No. 6394, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Roland N. Usher, The Citizens State Bank of Cortez, Minnequa Bank of Pueblo, William L. White, Rock Wool Insulating Company, Herbert F. Korholz and M.P.M. Investment Company.

Civil Action No. 6395, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Arthur Allen, Herbert F. Korholz, Rock Wool Insulating Company, and M.P.M. Investment Company.

Civil Action No. 6396, United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. W. A. Wills, Ltd., W. A. Wills, Herman Speken, Speken Wrecking Company, William Greenberg, Herbert F. Korholz, Rock Wool Insulating Company, and M.P.M. Investment Company.

Judgment dismissing complaint in these four cases affirmed by the Tenth Circuit Court of Appeals, 293 F.2d 751 (1961).

(c) Civil Action No. 6741. United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Rock Wool Insulating Company, M.P.M. Investment Company, Better Industries, Herbert F. Korholz, Martha F. Korholz, Howard P. Emrich, Audrey Johansen, Herman Speken, Anthony E. Reilly and Margaret Regan Reilly, dismissed by Judge Orley Phillips sitting as a District Judge.

(d) Civil Action No. 6177, United States District Court for the District of Colorado, entitled Robert S. Allen, James Allen, James J. Allen, Walker R. Allen, Harry E. Carter, Frank Karge, Clara Karge, Paul Bell, Virginia Bell, Robert H. McCormick, Jr., and Herbert S. Greenwald vs. Rock Wool Insulating Company, M.P.M. Investment Company, Colorado Insulating Company, Herbert F. Korholz, Martha F. Korholz, Herman Speken, Audrey Johansen, Howard Emrich and Martha Anne Korholz, Brennan's oral petition for intervention denied.

(e) Civil Action No. 34884, District Court in and for the County of Pueblo, State of Colorado, entitled Anthony E. Reilly and Margaret Regan Reilly vs. Herbert F. Korholz, Clarence O. Dimmock, Jr., Rock Wool Insulating Company, Reconstruction Finance Corporation, Clayton A. Becker, Oliver Gould, XYZ Corporation, First Doe and Second Doe, wherein Joseph M. Brennan's attempted intervention was denied.

(f) Civil Action No. 35528, District Court in and for the County of Pueblo, State of Colorado, entitled Mary Elizabeth Bates, David A. Sellers, Bertha E. Sellers, and Ann Blockhan, for themselves individually and for all other persons similarly situated, vs. Herbert F. Korholz, Oliver Gould, Clayton A. Becker, individually and as officers and directors of Rock Wool Insulating Company, and Rock Wool Insulating Company, wherein Joseph M. Brennan's attempted intervention was denied.

(g) Civil Action No. 36797, District Court in and for the County of Pueblo, State of Colorado, entitled Joseph M. Brennan vs. Herbert F. Korholz, Oliver Gould and Rock Wool Insulating Company, filed by Joseph M. Brennan.

(h) Civil Action No. 36868, District Court in and for the County of Pueblo, State of Colorado, entitled The People of the State of Colorado, on the Relation of R. L. Myers, vs. Mary E. Bates, D. K. Wolfe, Jr., C. C. Huston, Joseph M. Brennan, Earl P. Medea, Margaret Reilly and Eugene Carrell.

(i) Civil Action No. B-45641 in the District Court in and for the City and County of Denver, State of Colorado, entitled Better Industries, Inc., vs. Joseph M. Brennan, Anthony E. Reilly and Frances E. Morrissey, in which judgment was entered against Joseph M. Brennan on June 24, 1963.

(j) Civil Action No. 6192 in the United States District Court for the District of Colorado, entitled United States Gypsum Company vs. Rock Wool Insulating Company, M.P.M. Investment Company, Better Industries, Inc.,

Herbert F. Korholz, American Gypsum Company, and Joseph M. Brennan, Intervenor, affirmed by the Tenth Circuit Court of Appeals, 337 F.2d 849 (1964).

(k) Civil Action No. 21253 in the District Court in and for the City and County of Denver, State of Colorado, entitled Joseph M. Brennan vs. City and County of Denver, et al., affirmed by the Colorado Supreme Court, 397 P.2d 876 (1964).

(l) Civil Action No. 8828 in the United States District Court for the District of Colorado, entitled Joseph M. Brennan vs. Charles E. Grover, and John E. Gorsuch, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm known and d/b/a Gorsuch, Kirgis, Campbell, Walker and Grover, and other John Doe parties, judgment dismissing complaint affirmed by the Tenth Circuit Court of Appeals.

CONCLUSION

It is respectfully submitted that the writ should be denied for the reasons that the Petition for Certiorari (1) does not set forth any of the grounds set forth in Rule 19 of the Revised Rules of this Court, (2) does not comply with Rule 23 of the Revised Rules of this Court, and (3) does not present any grounds upon which a reversal could be predicated.

GORSUCH, KIRGIS, CAMPBELL,
WALKER AND GROVER

By. Charles E. Grover

CHARLES E. GROVER
1900 Security Life Building
Denver, Colorado 80202 222-8631
Attorneys for Respondents

JANUARY 3, 1966

APPENDIX A

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

Civil Action No. B-45641

BETTER INDUSTRIES, INC.
a Massachusetts corporation,

Plaintiff,

vs.

JOSEPH M. BRENNAN,
ANTHONY E. REILLY AND
FRANCES E. MORRISSEY,

Defendants.

ORDER

THIS MATTER, coming on to be heard by the Court this 20th day of November, 1964, at 9 o'clock a.m., upon the previous Order of this Court entered November 12, 1964, requiring that the Defendant Joseph M. Brennan appear to show cause, if any he may have, why he should not be punished by this Court for contempt for neglect and refusal to comply with the injunction in the judgment and decree entered heretofore, and why to vindicate the dignity of the Court a fine or imprisonment should not be imposed, and, further, why Defendant Joseph M. Brennan should not be required to pay Plaintiff's attorneys' fees and costs,

And the Court having heard argument of counsel for Plaintiff above named, and having heard argument of the Defendant Joseph M. Brennan, appearing pro se,

The Court Doth Find:

1) That heretofore on the 24th day of June, 1963, in this Civil Action No. B-45641, this Honorable Court entered a judgment and decree containing, among other things, the following:

> "That the merger of Rock Wool Insulating Company into MPM Investment Company March 31, 1960, was in all respects valid and binding upon the Defendants in this action, that the Plaintiff has fully discharged all its obligations to said Defendants by the deposit of $1,750.00 into the registry of this Court, that the Defendants have no further interest in Rock Wool Insulating Company, MPM Investment Company and Better Industries, Inc., arising through any interest in Rock Wool Insulating Company, and that the Defendants be and they hereby are enjoined from making any such claim."

2) That the Defendant Joseph M. Brennan, in causing to be filed on or about October 21, 1964, in the District Court in and for the City and County of Denver and State of Colorado, Civil Action No. B-76366 entitled Joseph M. Brennan v. Charles E. Grover, et al., wherein allegations are made by the said Joseph M. Brennan claiming an interest in Rock Wool Insulating Company and Better Industries, Inc. arising through any interest in Rock Wool Insulating Company, does constitute contempt of this Court, and that said Joseph M. Brennan, by filing said Civil Action No. B-76366, is now in contempt of this Court.

3) In making the foregoing findings, the Court has not found it necessary to consider the action of Joseph M. Brennan in filing in the District Court of the City and County of Denver and State of Colorado, Civil Action No. B-68156, on or about December 20, 1963, entitled, Joseph M. Brennan v. City and County of Denver, a a Municipal Corporation in the State of Colorado,

and Frank H. Conry, Clerk of the District Court of said Corporation, or Civil Action No. 8828, filed on or about October 19, 1964, in the United States District Court for the District of Colorado, and entitled Joseph M. Brennan v. Charles E. Grover et al.

And the Court Doth Hereby Order, Adjudge and Decree:

1) That said Joseph M. Brennan, Defendant in this action, may purge himself of contempt by dismissing said Civil Action No. B-76366 in the District Court in and for the City and County of Denver and State of Colorado.

2) That the Defendant Joseph M. Brennan shall appear before this Court at 9 o'clock a.m. on December 11, 1964, and shall satisfy this Court that said Civil Action No. B-76366 has been dismissed, and if the Court at that time and place determines that said Civil Action No. B-76366 has not been dismissed, the said Joseph M. Brennan forthwith shall be subject to such fine and/or imprisonment in the County jail of the City and County of Denver, in such amount and/or for such duration as this Honorable Court then may determine.

DONE IN OPEN COURT THIS 20th day of November, 1964.

BY THE COURT:

(Signed SAUL PINCHICK)
JUDGE

APPENDIX B

IN THE DISTRICT COURT IN AND FOR THE CITY AND COUNTY OF DENVER AND STATE OF COLORADO

Civil Action No. B-45641

BETTER INDUSTRIES, INC.
a Massachusetts corporation,

Plaintiff,

vs.

JOSEPH M. BRENNAN,
ANTHONY E. REILLY AND
FRANCES E. MORRISSEY,

Defendants.

ORDER

THIS MATTER, coming on to be heard by the Court this 14th day of December, 1964, at 9 o'clock a.m., upon the previous Order of this Court entered December 11, 1964, requiring the Defendant Joseph M. Brennan to appear to commence the sentence of 30 days in the City and County of Denver jail passed upon him for contempt of this Court December 11, 1964, and the Court having heard the statement of the Defendant Joseph M. Brennan and the attorneys for the Plaintiff being present,

The Court Doth Find:

1. That heretofore on the 24th day of June, 1963, in this Civil Action No. B-45641, this Honorable Court entered a judgment and decree containing, among other things, the following:

"That the merger of Rock Wool Insulating Company into MPM Investment Company March 31, 1960, was in all respects valid and binding upon the Defendants in this action, that the Plaintiff has fully discharged all its obligations to said Defendants by the deposit of $1,750.00 into the registry of this Court, that the Defendants have no further interest in Rock Wool Insulating Company, MPM Investment Company and Better Industries, Inc., arising through any interest in Rock Wool Insulating Company, and that the Defendants be and they hereby are enjoined from making any such claim."

2. That the act of the Defendant Joseph M. Brennan, in causing to be filed on or about October 21, 1964, in the District Court in and for the City and County of Denver and State of Colorado, Civil Action No. B-76366 entitled Joseph M. Brennan v. Charles E. Grover, et al., wherein allegations are made by the said Joseph M. Brennan claiming an interest in Rock Wool Insulating Company and Better Industries, Inc. arising through any interest in Rock Wool Insulating Company, does constitute contempt of this Court, and that said Joseph M. Brennan, by filing said Civil Action No. B-76366, is now in contempt of this Court.

3. That the Court has given the Defendant Joseph M. Brennan ample opportunity to purge himself of this contempt, having entered an Order November 20, 1964 allowing the Defendant Joseph M. Brennan until 9 o'clock a.m. on December 11, 1964 to do so and having ordered the said Joseph M. Brennan to appear at said time to satisfy this Court that Civil Action No. B-76366 had been dismissed.

4. That on December 11, 1964 Defendant Joseph M. Brennan appeared before this Court but had not dismissed and refused to dismiss Civil Action No. B-76366, and was thereupon sentenced by this Court to serve 30 days in the City and County of Denver jail, the said

Joseph M. Brennan being ordered to appear at 9 o'clock a.m. December 14, 1963 to begin serving said sentence.

THE COURT DOTH HEREBY ORDER, ADJUDGE AND DECREE: That Civil Action No. B-76366, Joseph M. Brennan v. Charles E. Grover, et al., be and it hereby is dismissed with prejudice, the cost thereof to be paid by the said Joseph M. Brennan.

IT IS FURTHER ORDERED AND DECREED that the sentence of Joseph M. Brennan to 30 days in the City and County of Denver jail imposed upon him December 11, 1964 by virtue of his willful violation of the previous injunction of this Court be and it hereby is suspended indefinitely upon the condition that Joseph M. Brennan does not institute any further civil actions of any kind or nature whatsoever wherein the said Joseph M. Brennan claims, alleges or asserts any right, title or interest in or to the legal or beneficial ownership of any shares of stock or stock certificates of Rock Wool Insulating Company, or claiming, alleging or asserting any right, title or interest in or to assignments or instruments of assignments of shares of stock or certificates of stock of Rock Wool Insulating Company previously made by various shareholder owners to the Defendant Joseph M. Brennan and relating to any alleged legal or beneficial interest of Joseph M. Brennan in or to any Rock Wool Insulating Company's shares of stock or stock certificates, including particularly but not limited to Rock Wool Insulating Company's shares or stock certificates No. 1 for 253 shares issued to David L. and Bertha E. Sellers; No. 36 for 39 shares issued to Rose Kiernan; No. 40 for 2.4 shares issued to Anne Blockhan; No. 45 for .6 share issued to Dr. Mary Elizabeth Bates; No. 39 for 5 shares issued to Frances E. Morrissey; and No. 55 for 5 shares issued to Joseph M. Brennan, or any assignments or instruments of assignments relating to said shares.

The said Joseph M. Brennan may prosecute any appeal or institute any action in the Supreme Court of Colorado he shall deem appropriate. However, inasmuch as the con-

tinued litigation of Joseph M. Brennan's alleged claims for Rock Wool Insulating Company's shares of stock and stock certificates have been held to be contempt of this Court, this Court shall retain jurisdiction to review any and all acts and litigation relating to this matter called to the attention of this Court in order to determine whether or not further willful violation or disobedience of the order of this Court of June 24, 1963 may have been committed and the Court may, unless ordered otherwise by the Supreme Court of Colorado, vacate the stay of execution of the sentence passed upon Joseph M. Brennan upon a finding of any further willful violation or disobedience of the order of this Court, including vexatious and groundless appeals of this action, Civil Action No. B-45641, or Civil Action No. B-76366.

DONE IN OPEN COURT this 14th day of December, 1964.

BY THE COURT:

(Signed) SAUL PINCHICK
SAUL PINCHICK, JUDGE

Conformed Copy.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
FEB 16 1966
JOHN F. DAVIS, CLERK

No. 851

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

JOSEPH M. BRENNAN,
Petitioner,

vs.

CHARLES E. GROVER and JOHN E. GORSUCH, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm d/b as GORSUCH, KIRGIS, CAMPBELL, WALKER and GROVER, and JOHN DOE, JOHN ROE, JANE DOE, JANE ROE, and JOHN and JANE ROES unknown at the present time,

Respondents.

PETITIONER'S REPLY TO THE BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION OF JOSEPH M. BRENNAN FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

JOSEPH M. BRENNAN, *Pro Se*
P. O. Box 1115,
Denver 1, Colorado

EASTWOOD PRINTING CO. • 3554 LARIMER STREET • DENVER, COLORADO

INDEX

PAGE

Prefactory Statement 1

Respondents brief makes no denial of the facts 2, 3

Respondents "supplemental statement of the case" is a false, evasive and immaterial dissertation 3

Resume of facts and truth in re: The cases cited in items (a) to (l) on pages 6 to 9 of respondents opposition brief—concerning respondent Charles E. Grover's consistent false, deceptive and fraudulent artifices in the cases he cites 3, 4, 5, 6, 7, 8, 9, 10, 13

The petition complies with Rules 19 and 23 11

Dismissal of Civil Action No. B-76366 without granting a hearing thereon to petitioner denied due process 12, 13

Conclusion 13

STATUTES AND RULES CITED

Revised Rules of the United States Supreme Court Rules 19, 21, 23(3) and 23(4), 26(1) 11, 12

Colorado Revised Statutes, Chap. 31, Art. 11, Sec. 1 ..... 2, 3

Colorado Rules of Civil Procedure, Rule 104 2

APPENDIX

Affidavit of Joseph M. Brennan in re: Dismissal of U.S. Gypsum Co. v. Rock Wool Co. Suit No. 6192 ..... 8, 9, 10, 11, 14, 15, 16, 17, 18

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 851

JOSEPH M. BRENNAN,
Petitioner,

vs.

CHARLES E. GROVER and JOHN E. GORSUCH, each individually, or jointly, or as agents, or partners in the Denver, Colorado law firm d/b as GORSUCH, KIRGIS, CAMPBELL, WALKER and GROVER, and JOHN DOE, JOHN ROE, JANE DOE, JANE ROE, and JOHN and JANE ROES unknown at the present time,

Respondents.

PETITIONER'S REPLY TO THE BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

The false, vague, misrepresented and misleading nature of Respondents "Supplemental Statement of the Case," in contrast with the true facts as recited on pages 5 to 11 of the Petition, requires proper elucidation, viz:

RESPONDENTS BRIEF MAKES NO DENIAL OF THE FACTS

1. That Rock Wool Insulating Company (hereinafter referred to as: Rock Wool Co.) endorsed in blank Certificates of Stock, and the duly executed, irrevocable and verified assignments thereof, were delivered unto Petitioner in 1954 by said company's registered stockholders, and that same remained in Petitioner's possession thereafter, until stolen from him in 1957 or 1958 (Petition, page 5), and

2. That Petitioner acquired ownership of all of said endorsed in blank Certificates of Stock, and said duly executed assignment instruments, upon delivery thereof unto him by said registered stockholders in July, August and September, 1954, under the provisions of the Colorado Revised Statutes, Chap. 31, Art. 11, Sec. 1 (Page 11 of Petition APPENDIX, EXHIBIT "H"), and

3. That Petitioner was possessed of a Statutory right to recover his stolen personal property, viz, said Certificates of Stock and said assignment instruments, under the purview of Colorado Revised Statutes, Chap. 40, Art. 5, Secs. 2, 13 and 14 (Pages 11 and 12 of Petition APPENDIX, EXHIBIT "I"). And also, Rule 104 of the Colorado Rules of Civil Procedure (Petition, pages 18 and 19).

4. That Respondents in 1959, connived and conspired to obtain, and did then knowingly and surreptitiously obtain possession of Petitioner's stolen personal property, viz, said Certificates of Stock and assignments thereof, from the parties that stole same from Petitioner in 1957 or in 1958 (Petition, page 7), and

5. That in the United States District Court for the District of Colorado, the verdict of the jury in Case No. 7754 on February 2, 1965, was, that Petitioner was the owner of Rock Wool Co. endorsed in blank Certificate of Stock No. 1, and the owner of the pertinent assignment instrument; and, the verdict of the jury in Case No. 7958 in said Court on February 4, 1965, was that Petitioner was the owner of Rock Wool Co. Certificate of Stock No. 55, as registered in Petitioner's name since April 3, 1954, and as stolen from him in 1958 (Petition, pp. 8-9).

RESPONDENTS "SUPPLEMENTAL STATEMENT OF THE CASE" IS A FALSE, EVASIVE AND IMMATERIAL DISSERTATION

The false, misrepresented, deceptive and misleading nature of the assertion on page 3 of Respondents Opposition Brief that, the within replevin suit against Respondents, is: "a continuation of a long line of litigation conducted pro se by Mr. Brennan (Petitioner) against various parties", requires the elucidation as follows:

RESUME OF THE FACTS AND TRUTH IN RE: THE CASES CITED IN ITEMS (a) TO (l) ON PAGES 6 TO 9 OF RESPONDENTS OPPOSITION BRIEF

"(a) Civil Action No. 4860. Brennan v. Wills, Ltd.', was a replevin suit seeking possession of Rock Wool Co. endorsed in blank Certificate of Stock No. 46, which could not be delivered to said Brennan by the registered stockholders thereof, when the pertinent duly executed, irrevocable and verified assignment thereof was delivered

to said Brennan, by reason that said Certificate was then held in a pledged status. And, wherein it was adjudicated that, title to certificates and to the shares represented thereby can be transferred only in accordance with Colorado Revised Statutes (1953) Sec. 31-9-1 (now, Sec. 31-11-1).

Significantly, said Statute is affirmatively asserted on page 26 of Respondents Opposiiton Brief (the same Respondent in the instant suit), dated May 1959, in re: Petition No. 866 of said Brennan to the United States Supreme Court, as the controlling law, viz, that delivery of an endorsed in blank Certificate of Stock conveys title thereto and to what is represented thereby.

Significantly, also is the false and deceptive assertion on page 23 of said Respondents Opposition Brief to said Petition No. 866, viz: "Appellant Brennan, choosing to rely upon his status of stockholder * * * undertook to show that he became such a purchaser (of said Certificate No. 46) at public auction, and failed in his proof."

"(b) Civil Actions No'd. 6393, 6394, 6395 and 6396, Brennan v. Korholz, Usher, Allen & Speken", respectively, were replevin suits seeking possession of Rock Wool Co. endorsed in blank Certificates of Stock No'd. 4, 14, 16, 17 and 22, which could not be delivered to said Brennan by the registered stockholders thereof, when the pertinent duly executed, irrevocable and verified assignments thereof were delivered to said Brennan, by reason that said Certificates were then held in a pledged status. And, wherein it was adjudicated in accordance with the ruling in the above stated Case No. 4860, and

"(c) Civil Action No. 6741, Brennan v. Rock Wool

Insulating Company, et al", was a stockholders derivative suit, which was dismissed without prejudice on a Motion of the Respondent Charles E. Grover as counsel for defendants that, Brennan (petitioner) had not answered the interrogatories in said suit. Such suit was instituted incident to the dismissal of suit No. 6177, and for the reasons stated in item (d) as follows, and

"(d) Civil Action No. 6177, Allen, et al vs. Rock Wool Co. and Korholz, et al", was a Rock Wool Co. stockholders derivative action, wherein Petitioner, although a registered stockholder in Rock Wool Co., he was not named therein as a party plaintiff, and wherein said suit was dismissed on a joint Motion of plaintiffs and defendants, and which Motion registered a fraudulent statement concerning the ownership of Rock Wool Co. Certificate of Stock No. 48, matters pertinent thereto are as follows:

1. That Respondent Charles E. Grover, acting as counsel for the defendants, and as an officer of the Court, did connive and conspire with counsel for plaintiffs, and as officers of the Court, to file in the Court a Motion to Dismiss said Suit No. 6177 with prejudice, wherein it was registered with fraudulent intent and design on the part of each of said parties that, the plaintiffs Allens owned Rock Wool Co. Certificate of Stock No. 48, and

2. That each of said parties who had executed said Motion to Dismiss, and had filed same in the Court, had knowledge prior thereto that, Petitioner had purchased said Certificate No. 48 from the registered stockholder, viz, Herbert F. Greenwald (deceased) in 1955, and that Petitioner had not at any time subsequent thereto sold or assigned said Certificate No. 48 to any other party, and

3. That said Motion was filed in the Court secretly, and wherein Petitioner had no knowledge thereof, and

4. That Respondent Charles E. Grover's assertion that: "Brennan's (Petitioner's) oral petition for intervention (in said suit No. 6177) was denied", is false and is willfully and knowingly fraudulently intended and designed to mislead and deceive this Court. For, in fact, Petitioner served and filed a Motion to Intervene therein, and, Respondent Charles E. Grover as counsel for defendants, served and filed a Motion opposing Petitioner's said Motion to Intervene in said suit No. 6177. And, the Court incident thereto dismissed said suit No. 6177 with prejudice to all parties, except, Petitioner, and

5. That at the time of the hearing before the Court on said dismissal of said suit No. 6177, Petitioner had no knowledge of the said Motion to Dismiss same, which registered said false and fraudulent statement concerning said Certificate No. 48, and

"(e) Civil Action No. 34884, Reilly v. Rock Wool Co., et al", wherein Petitioner was not a party, and wherein Respondents assertion that: "Joseph M. Brennan's attempted intervention was denied", is false and is willfully and knowingly fradulently intended and designed to mislead and deceive this Court.

"(f) Civil Action No. 35528, Selers, et al vs. Korholz, et al", is a stockholders derivative action now pending in the District Court for Pueblo County, Colorado, and wherein Petitioner was not a party, and wherein the assertion of Respondents that: "Joseph M. Brennan's

attempted intervention was denied", is false and is willfully and knowingly fradulently intended and designed to mislead and deceive this Court.

"(g) Civil Action No. 36797, Brennan v. Kerholz, et al", was a suit by Petitioner as a registered Rock Wool Co. stockholder, to examine said Company's books.

"(h) Civil Action No. 36868, The People of the State of Colorado v. Bates, et al", is a pending Quo Waranto suit in the District Court for Pueblo County, Colorado.

"(i) Civil Action No. B-45641, Better Industries, Inc. v. Joseph M. Brennan (Petitioner), Anthony E. Reilly & Frances E. Morrissey (Deceased), wherein the following facts obtain:

1. That Better Industries, Inc. brought this suit with fraudulent intent and design, apparently under the Declaratory Judgment Act, and wherein it prayed that said Reilly be ordered to deliver to Better Industries, Inc. Rock Wool Co. unindorsed Certificate of Stock No. 55, as registered in Brennan's (Petitioner's) name since April 1954, and which was stolen from said Brennan by said Reilly in 1958. Therein, a void Summary Judgment was entered, and wherein no adjudication pertaining to said Certificate No. 55 exists, except, as rendered by the verdict of the jury on February 4, 1965, in said Case No. 7958 in the U. S. District Court at Denver, and as referred to in paragraph 5 on page 3 hereof, and wherein Petitioner was found to be the owner of Rock Wool Co. Certificate of Stock No. 55, and

3. That said Morrissey had received payment in full for the sale of said Company's duly endorsed in blank

Certificate of Stock No. 49 and what was represented thereby, and had delivered same to said Brennan, and which thereafter was cancelled and said Certificate No. 55 issued in said Brennan's name in place thereof, and

4. That said Reilly had attested under oath in said suit No. B-45641, that he had no right, title or interest in or to said Certificate No. 55, and

5. That the assertion of Respondent Charles E. Grover that: "Judgment was entered against Joseph M. Brennan (In case No. B-45641) on June 24, 1963" concerning said Certificate of Stock No. 55 or the ownership thereof, is fraudulently intended and designed to deceive and mislead this Court, as the ownership of said Certificate No. 55 has by the jury verdict in said replevin suit No. 7958 in the United States District Court on February 4, 1965, been established to be vested in said Brennan (Petitioner), and as referred to in paragraph 5 on page 3 hereof, and

6. That any judgment in said suit No. B-45641, in the said circumstances, is null, void and of no effect, and is not lawfully binding on said Brennan (Petitioner).

"(j) Civil Action No. 6192, United States Gypsum Company v. Rock Wool Co., Joseph M. Brennan, Intervener", was a patent infringement suit, wherein said Brennan intervened by reason that he was a registered and beneficial stockholder in Rock Wool Co., and also, a duly elected Director thereof and its Secretary-Treasurer, and wherein the trial court in dismissing intervener Brennan's intervetnion action, gravely exceeded its authority, abused its discretion and denied said Brennan due process

of law, and wherein the pertinent facts require proper elucidation, and as follows:

1. That despite the fact that said Brennan affirmatively stated in his intervention complaint that he was the registered owner of said Company's Certificate of Stock No. 55, and despite the fact that the Defendants affirmatively so stated in its Answer to said Brennan's complaint, the trial judge arbitrarily and capriciously ruled that said Brennan was never a Rock Wool Co. stockholder, and

2. That despite the fact that said Brennan moved to Dismiss his intervention action either with or without prejudice, the trial court wrongfully, arbitrarily and capriciously denied said Brennan his right to do so, and

3. That although the trial court affirmatively stated that it would rule only on whether or not that said Brennan (Petitioner) was a Rock Wool Co. Director and Officer, it wrongfully, arbitrarily and capriciously ruled on Petitioner's Rock Wool Co. Stockownership, and

4. That the trial court affirmatively stated that it was not ruling on any pending actions of said Brennan concerning any stockownership in said Company, and

5. That the trial court acted arbitrarily and capriciously in first dismissing said Brennan's intervention action, and thereafter ruling on various pending motions concerning said Brennan's rights in his said intervention action, and

6. That matters pertinent to the aforesaid are more fully set forth in the affidavit of said Brennan as ap-

pended hereto marked EXHIBIT "A", and by reference hereby made a part hereof as though set forth in full herein, and

7. That the trial court exceeded its authority, abused its discretion, acted arbitrarily and capriciously in holding said Brennan in contempt of court for filing a replevin suit No. 8828 against Respondent Charles E. Grover, et al, fining him $1,000.00 therein, which was suspended under the threat of reinstatement, should Petitioner file an appeal therein, and

8. That Respondent Charles E. Grover in the capacity of a Notary Public, executed an affidavit for said Herbert F. Korholz on February 12, 1960, concerning said case No. 6192 which knowingly and falsely represented that said Korholz executed said affidavit at Denver, Colorado, when in fact said Korholz was in a Federal Prison in Arizona, serving a sentence in connection with criminal action No. 15606 and a conviction therein rendered in the United States Court for the District of Colorado.

"(k) Civil Action No. 21253, Brennan v. City and County of Denver", was a replevin suit seeking recovery of Rock Wool Insulating Company Certificate of Stock No. 55, unindorsed and registered in said Joseph M. Brennan's name (Petitioner), and which certificate No. 55 is referred to in paragraph 5 on page 3 hereof.

"(l) Civil Action No. 8828, Brennan v, Grover, et al", was a replevin suit seeking recovery of Petitioner's said stolen personal property, wherein Petitnoner sought recovery of the specified endorsed in blank Rock Wool Insulating Company Certificates of Stock No'd. 4, 36, 40

and 45, which action concerned the contempt of court matter referred to in paragraph 7 on page 10 hereof.

THE PETITION COMPLIES WITH RULES 19 & 23 OF THIS COURT

The contention of Respondents in its "CONCLUSION" on page 9 of its Brief are erroneous, viz: (1) That the Petition does not comply with Rules 19 and 23; (2) that the Petition does not present any grounds upon which reversal could be predicated; and, (3) that the Petition is fatally defective and should be dismissed. With regard to the aforesaid and Respondents contentions as set forth on pages 2 and 3 of its Brief, the following elucidation is imperative, viz:

Rule 19 provides that a writ of certiorari will be granted where there are special and important reasons therefor. And, certainly a denial of the due process to Petitioner constitutes such a reason for review involving a Federal Question for resolution by this Court.

Rule 23(3) and (4) prescribes the form, manner and time in re submission of the Petition. And, certainly a perusal of the Petition as submitted reveals that all of the Rules have been fully complied with, despite the unwarranted denial and protracted delay of the Colorado Supreme Court in preparing and delivering the required certified transcript of record of the proceedings in the Courts below, and which record of proceedings includes the Opening Brief, Reply Brief and Petition for Rehearing of the Plaintiff in error, as were duly served, and which parts of the record are specified in Rules 21(1) and 26(1) of this Court.

Respondents contention that Petitioner violated Rule 23(3) by submitting with his Petition copies of the Opening and Reply Briefs of Plaintiff in Error to the Colorado Supreme Court, is a completely erroneous contention, for in fact, Petitioner did not submit any such copies of said Briefs with his Petition.

However, to make the Petition properly complete, and capable of conforming with Rule 23(4), and also to show how Petitioner obtained opportunity for the first time, to present the matter of denial of due process to Petitioner, such matter was set forth in the Petition on the pages and under the headings thereon, viz: In "QUESTIONS PRESENTED", at page 4, par. 3 (a, b and c); in "STATEMENT", at page 9, pars. 3 and 4 and at pages 11 and 12; in "REASONS RELIED ON FOR ALLOWANCE OF THE WRIT", at page 13, pars. I to V; in "ARGUMENT", at pages 15 and 16.

DISMISSAL OF CIVIL ACTION NO. B-76366, WITHOUT GRANTING A HEARING THEREON TO PETITIONER, DENIED HIM DUE PROCESS.

In the paragraph at the bottom of page 5 of Respondents Brief a false, deceptive and misleading assertion is registered, and to wit:

> "The statements in the brief of Plaintiff in Error that he was not afforded a hearing on the dismissal of Civil Action No. B-76366 are incorrect. * * * but he was in Civil Action No. B-76366 granted a hearing before Judge Pinchick on January 6, 1965, which resulted in the order denying the Plaintiff's motion for rehearing or new trial which appears in the record at folio 104."

Although no trial was held on said suit No. B-76366, nor any hearing granted on the motion of defendants to dismiss said suit, it was incumbent upon Plaintiff-Brennan as a prerequisite to terminating said District Court's jurisdiction, to file a motion for rehearing or a new trial. And, after said District Court had entered its order on January 6, 1965, denying Plaintiff-Brennan's said motion to be granted his right to a hearing on the motion of defendants to dismiss said suit No. B-76366, Plaintiff-Brennan was then not only denied his right to such a hearing, but also denied then or at any other time any hearing on defendants' motion to dismiss, and Petitioner was thereby denied due process of law.

CONCLUSION

The dismissal of Petitioner's replevin suit wherein he sought recovery of his stolen personal property as wrongfully taken and wrongfully withheld by Respondents, without Notice of a Hearing, or the granting of any Hearing on Respondents Motion to Dismiss said suit, constitutes a denial of Petitioner's Constitutional rights and denial of the due process of law. The nature and effect of such action and conduct by the Courts below is of special and far reaching importance, and warrants review by this Court. For the reasons set forth above, it is respectfully submitted that this Petition for a Writ of Certiorari should be granted.

JOSEPH M. BRENNAN,
Petitioner, Pro Se.
P. O. Box 1115
Denver 1, Colorado

APPENDIX — EXHIBIT "A" — AFFIDAVIT

JOSEPH M. BRENNAN, of lawful age first having been duly sworn on oath deposes and says:

That prior to the hearing on September 23, 1963, in re: Affiant's intervention in the U. S. Gypsum Co. v. Rock Wool Co. patent infringement suit No. 6192 in the District Court at Denver, Colorado, the trial Judge, Ewing T. Kerr, requested Affiant to state what was the issue to be adjudicated therein, and Affiant said it was set forth in the Prayer of the Intervention action, which Prayer Affiant then read to the Court, and which was as follows:

1. That he (Affiant) be granted his full rights in the Discovery Procedure.

2. For an accounting for the injury, losses and damages caused Intervener and/or Rock Wool Insulating Company by Defendants MPM Investment Company, Better Industries, Inc., and Herbert F. Korholz.

3. For a declaratory judgment holding that Intervener and/or Rock Wool Insulating Company are not liabel for any alleged infringement of Plaintiff's patents.

4. For an Order holding that MPM Investment Company, Better Industries, Inc., and Herbert F. Korholz are jointly liable for any injury, losses and damages arising out of the alleged infringement of Plaintiff's patents.

5. For an award of all costs and expenses incurred by Intervener in the within action.

That immediately after Affiant had read said Inter-

vention Prayer in open Court, the following discussion occurred, and, wherein said Judge Kerr will be referred to as the: COURT, and Joseph M. Brennan as: AFFIANT.

COURT: Now let me understand this. The only issue you want me to determine is whether or not you are a Director or Officer of Rock Wool Co.? AFFIANT: Yes, and the damage done to me by the patent infringement.

COURT: All right, then I will determine solely the question of whether or not you are a Director or Officer of Rock Wool Co. And if you are, then what damage was done; but if you are not: Then that answers the question, you are not entitled to an accounting. I have that straight now. That is the only thing I will determine.

That Affiant proceeded with the Intervention hearing on the issue of whether or not he was a Director or Officer of Rock Wool Co., and on September 24, 1963, at said hearing, said Judge Kerr, without any prior notice or without stating any reason therefor, induced the following discussion, and wherein Judge Kerr will be referred to as the: COURT, and Joseph M. Brennan as: AFFIANT.

COURT: I am going to determine title to the stock. AFFIANT: Well, your honor I will have to move to dismiss the cross-claim (Intervention action) because it will interfere with (Affiant's) pending suits.

COURT: Do you want to dismiss it with prejudice? AFFIANT: Without prejudice.

COURT: No. Sir. I will not dismiss it without prejudice. AFFIANT: Then I will dismiss it with prejudice because it would destroy me. COURT: I am going to decide this case we are going ahead with it.

Thereafter, said Judge Kerr said: I am going to dismiss the Intervener's complaint. Now these (pending) Motions. I suppose we had better—to keep the record clear, Mr. Clerk, pass upon them.

No. 4 Motion of defendants other than Brennan to continue trial. I will overrule that motion.

No. 5. Motions of defendants that depositions be taken before the Court, I will overrule that Motion, unless they have already been taken. You are winning here Mr. Brennan. I am ruling against these defendants (After he had dismissed Brennan's Intervention action).

No. 6. Motion of defendant Martha F. Korholz to quash or limit the Subpoena Duces Tecum (of Brennan which was never complied with). I will overrule that Motion.

No. 9. Motion of Intervener for an Order directing that Anthony E. Reilly fully comply with the Subpoena Duces Tecum. I will overrule that Motion.

No. 10. Motion of Intervener under the provisions of Title 2 8USC, Sec. 2283. I don't know—what is that? I don't have the Code here.

Motion of Intervener in Opposition to Stay Discovery Proceedings. I will overrule that Motion.

Motion of Defendants to Say Discovery Proceedings. I will overrule that Motion.

Motion of Anthony E. Reilly to quash or limit Subpoena Duces Tecum. I will overrule that Motion.

Motion of Intervener for production of documents and objects for inspection, copying and photographing. I will overrule that Motion.

Does that keep the records complete Mr. Clerk. Clerk: Yes.

Incident to the aforesaid the following discussion occurred on September 24, 1963, at said Intervention hearing, by said Judge Kerr who will be referred to as the: COURT, and Joseph M. Brennan who will be referred to as: AFFIANT.

AFFIANT: Does this ruling include (dismissal of) suits now pending in this Court—other suits that are now pending—and any future suits? COURT: I am not going to pass on that. That is one for the local judges to decide.

That two of said suits concerning ownership of Rock Wool Co. Certificates of Stock and what was represented thereby, were tried to jury in the United States District Court for the District of Colorado, viz: No. 7754, Brennan v. Sellers, on February 1 and 2, 1965, and verdict in favor of Brennan rendered in the amount of $55,330.00; and, No. 7958, Brennan v. Reilly, on February 3 and 4, 1965, and verdict in favor of Brennan rendered in the amount of $25,000.00.

That subsequently, Affiant filed a replevin suit No. 8828, Joseph M. Brennan v. Charles E. Grover, et al, in the United States District Court for the District of Colorado.

That on December 7, 1964, said Judge Kerr dismissed said suit No. 8828, without any prior notice thereof, or

granting to AFFIANT any hearing on dismissal of said replevin action No. 8828. However, thereupon said Judge Kerr declared that AFFIANT was in contempt of Court for filing said replevin suit No. 8828, and imposed a $1000.00 fine upon AFFIANT therefor.

That then said Judge Kerr entered an Order, viz: "And doth further Order, adjudge and decree that any appeal of this Order of dismissal (of said replevin suit No. 8828) with prejudice shall be prosecuted by Joseph M. Brennan, only on paying into the registry of the Court $1,000.00 fine imposed upon him this date in civil action No. 6192 by virtue of Joseph M. Brennan having been found guilty of civil contempt of court in said civil action No. 6192 as more particularly set forth in the separate Order of this Court entered this date in said civil action No. 6192."

That AFFIANT verily believes all of the foregoing to be true to the best of his knowledge and belief. Further AFFIANT sayeth nought.

(Signed) JOSEPH M. BRENNAN

Subscribed and sworn to before me this 4th day of February, 1966.

My Commission expires October 13, 1969

(Signed) SARAH MAPSTON
Notary Public

NOTARY SEAL
IMPRESSION
HERE